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Rules and Regulations

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OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 534

RIN 3206–AL01

Senior Executive Service Pay

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The Office of Personnel Management is issuing final regulations to provide agencies with the authority to increase the rates of basic pay of certain members of the Senior Executive Service whose pay was set before the agency's senior executive performance appraisal system was certified for the calendar year involved. The final regulations allow an agency to review the rate of basic pay of these employees and provide an additional pay increase, if warranted, up to the rate for level II of the Executive Schedule upon certification of the agency's senior executive performance appraisal system for the current calendar year.

DATES: *Effective Date:* The final regulations will become effective on July 10, 2006.

FOR FURTHER INFORMATION CONTACT: Jo Ann Perrini by telephone at (202) 606–2858; by FAX at (202) 606–0824; or by e-mail at *pay-performance-policy@opm.gov.*

SUPPLEMENTARY INFORMATION: On March 3, 2006, the Office of Personnel Management (OPM) issued proposed regulations to provide agencies with the authority to increase the rates of basic pay of certain members of the Senior Executive Service (SES) whose pay was set before the agency's senior executive performance appraisal system was certified under 5 CFR part 430, subpart D, for the calendar year involved (71 FR 10913). We proposed that agencies be authorized to review the rates of basic pay set for these SES members and provide an additional pay increase, if warranted, up to the rate for level II of the Executive Schedule upon certification of the agency's senior executive performance appraisal system for the current calendar year. The additional pay increase would not be considered a pay adjustment for the purpose of applying 5 CFR 534.404(c) (''the 12-month rule'').

The 30-day public comment period ended on April 3, 2006. During the public comment period, OPM received comments from eight Federal agencies and one association of Federal executives. All of the commenters fully support OPM's proposed regulations. Therefore, we are adopting the proposed regulations as final.

''Certification Gap''

Under the new SES performance-based pay system, an agency must set and adjust the rate of basic pay for an SES member on the basis of the employee's performance and/or contribution to the agency's performance, as determined by the agency through the administration of its performance management system(s) for senior executives. Under 5 U.S.C. 5382(b), the maximum rate of the SES rate range may not exceed the rate for level III of the Executive Schedule unless the agency's senior executive performance appraisal system is certified under 5 U.S.C. 5307(d). By law, such certification must be made on a calendar year basis. (See 5 U.S.C. 5307(d) and 5 CFR part 430, subpart D.) Therefore, an agency may not set or adjust pay for an SES member at a rate above the rate for level III until its senior executive performance appraisal system is certified for the calendar year involved. Since many agencies' senior executive performance appraisal systems are not certified at the beginning of a calendar year, there is a gap from the time an agency may set or adjust pay above level III (in the previous calendar year) to the time an agency may set or adjust pay above level III upon certification of its senior executive performance appraisal system (in the next calendar year).

The regulations at 5 CFR 534.404(e)(2) allow agencies that eventually receive certification of their senior executive performance appraisal system(s) to provide an additional pay increase to certain SES members, such as a new appointee with superior leadership skills, an SES member accepting a position with substantially greater responsibility, or an SES member who is critical to the mission of the agency and who is likely to leave the agency. This is accomplished by providing for an additional exception to the ''12-month rule.''

The requirement in 5 U.S.C. 5307(d) that senior executive performance appraisal systems be certified on a calendar year basis may be changed only through legislation. Although the commenters fully support OPM's efforts to close the ''certification gap,'' several recognized the need for a long-term solution and recommended a legislative change to allow senior executive performance appraisal systems to be certified on an annual basis (i.e., once every 12 months), rather than on a calendar year basis, as required by current law.

Effective Date

Under 5 CFR 534.404(e)(2), the decision to provide an additional pay increase to an SES member may not be made effective before the date the agency's senior executive performance appraisal system is certified under 5 CFR part 430, subpart D, or after December 31st of the calendar year for which the agency's system is certified. An agency asked whether the effective date for providing an additional pay increase would be the effective date of the final regulations or the date the agency's senior executive performance appraisal system is certified. If an agency's senior executive performance appraisal system is certified for calendar year 2006 before the final regulations become effective, the earliest date an agency may provide an additional pay increase would be the effective date of the final regulations. The agency has no authority to provide an additional pay increase until the final regulations become effective. However, if an agency's senior executive performance appraisal system is certified for calendar year 2006 after the final regulations become effective, the earliest date an agency may provide an additional pay increase would be the date the agency's senior executive performance appraisal system is certified.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities because they apply only to Federal agencies and employees.

E.O. 12866, Regulatory Review

This rule has been reviewed by the Office of Management and Budget in accordance with E.O. 12866.

List of Subjects in 5 CFR Part 534

Government Employees, Hospitals, Students, and Wages.

Office of Personnel Management.

Linda M. Springer,

Director.

■ Accordingly, OPM is amending part 534 of title 5 of the Code of Federal Regulations as follows:

PART 534—PAY UNDER OTHER SYSTEMS

Subpart D—Pay and Performance Awards Under the Senior Executive Service

■ 1. The authority citation for part 534 continues to read as follows:

Authority: 5 U.S.C. 1104, 3161(d), 5307, 5351, 5352, 5353, 5376, 5382, 5383, 5384, 5385, 5541, 5550a, and sec. 1125 of the National Defense Authorization Act for FY 2004, Public Law 108–136, 117 Stat. 1638 (5 U.S.C. 5304, 5382, 5383, 7302; 18 U.S.C. 207).

■ 2. In § 534.404, redesignate paragraphs (c)(3)(v) and (vi) as (c)(3)(vi) and (vii), respectively, add new paragraph (c)(3)(v), and revise paragraph (e) to read as follows:

§ 534.404 Setting and adjusting pay for senior executives.

* * * * *

(c) 12-month rule. * * *

(3) * * *

(v) A determination to provide an additional pay increase under paragraph (e)(2) of this section when an agency's senior executive performance appraisal system is certified under 5 CFR part 430, subpart D, after the beginning of a calendar year;

* * * * *

(e) *Adjustments in pay after certification of applicable performance appraisal system.*

(1) In the case of an agency that obtains certification of a performance appraisal system for senior executives under 5 CFR part 430, subpart D, an authorized agency official may increase a covered senior executive's rate of basic pay up to the rate for level II of the Executive Schedule, consistent with the limitations in § 534.403(a)(3). The authorized agency official may provide an increase in pay if warranted under the conditions prescribed in paragraph (b) of this section and if the senior executive is otherwise eligible for such an increase (i.e., he or she did not receive a pay adjustment under § 534.404(c) during the previous 12-month period). An adjustment in pay made under this paragraph is considered a pay adjustment for the purpose of applying § 534.404(c).

(2) In the case of an agency that was prevented from establishing or adjusting a rate of basic pay above the rate for level III of the Executive Schedule for an individual upon initial appointment to the SES under § 534.404(a) or for a current SES member using one of the exceptions to the 12-month rule in § 534.404(c)(4)(i), (ii), or (iii) because the agency had not yet obtained certification of its performance appraisal system for senior executives under 5 CFR part 430, subpart D, in the current calendar year, an authorized agency official may increase such a senior executive's rate of basic pay up to the rate for level II of the Executive Schedule upon certification of the agency's senior executive performance appraisal system, consistent with the limitations in § 534.403(a)(3). The authorized agency official may review the previous determination to set or adjust the pay of a senior executive to determine whether, and to what extent, an additional pay increase may be warranted based on the same criteria used for the previous determination. The determination to provide an additional pay increase may not be made effective before the date the agency's senior executive performance appraisal system is certified under 5 CFR part 430, subpart D, or after December 31st of the calendar year for which the agency's system is certified. An adjustment in pay made under this paragraph is not considered a pay adjustment for the purpose of applying § 534.404(c) and does not begin a new 12-month period for that purpose.

[FR Doc. E6–10750 Filed 7–7–06; 8:45 am]

BILLING CODE 6325–39–P

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Part 1031

Commission Involvement in Voluntary Standards

AGENCY: Consumer Product Safety Commission.

ACTION: Final rule.

SUMMARY: The Consumer Product Safety Commission (CPSC or Commission) is revising its regulations governing the Commission's involvement in voluntary standards activities. The revisions more accurately reflect current Commission practices and strengthen oversight of staff involvement in standards making activities. The revisions also codify existing procedures for internet disclosure and public comment regarding standards activities in which Commission staff is actively involved.[1]

EFFECTIVE DATE: July 10, 2006.

FOR FURTHER INFORMATION CONTACT: Barbara Parisi, Office of the General Counsel, Consumer Product Safety Commission, 4330 East-West Highway, Bethesda, Maryland 20814; telephone (301) 504–7879; *bparisi@cpsc.gov.*

SUPPLEMENTARY INFORMATION: Since this rule relates solely to rules of agency organization, procedure and practice, pursuant to 5 U.S.C. 553(b) notice and other public procedures are not required. The rule is effective immediately upon publication in the **Federal Register**. Further, this action is not a rule as defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612, and, thus, is exempt from the provisions of the Act.

Background

Congress enacted the Consumer Product Safety Act (CPSA) in 1972, codified at 15 U.S.C. 2051, *et seq.*, to protect consumers against unreasonable risks of injury associated with consumer products. In furtherance of that goal, Congress established the Consumer Product Safety Commission (CPSC or Commission) as an independent regulatory agency, and granted it broad authority to promulgate mandatory safety standards for consumer products as a necessary alternative to industry self-regulation. 15 U.S.C. 2056(a)(1)(A). As initially enacted, the CPSA did not contain any language referring to voluntary standards.

In 1978, the Commission issued regulations describing the extent and form of Commission involvement in the development of voluntary standards, 43 FR 19216, 16 CFR part 1032—Commission Involvement in Voluntary Standards Activities. In the Background section, the Commission acknowledged the contribution which voluntary standards had made to reducing hazards associated with consumer products, and stated that it supported an effective

[1] Chairman Hal Stratton filed a statement which is available from the Office of the Secretary or on the Commission's Web site at *http://www.cpsc.gov.*

voluntary standards program. It also stated its belief that a proper combination of voluntary and mandatory standards can have a higher ''payoff'' in increased product safety than either mandatory or voluntary activities alone could have.

In 1981, Congress amended the CPSA, the Federal Hazardous Substances Act, and the Flammable Fabrics Act to mandate that the Commission give preference to voluntary standards over promulgating mandatory standards if it determines that a voluntary standard will eliminate or adequately reduce an injury risk, and that there will be a likelihood of substantial compliance with the standard. 15 U.S.C. 2056(b), 15 U.S.C. 1262(g)(2), 15 U.S.C. 1193(h)(2). The amendments also require the Commission to provide administrative and technical assistance to organizations engaged in voluntary standards development. 15 U.S.C. 2054(a)(3) and (4).

In 1989, the CPSC adopted regulations to reflect the policies set forth by the Congress in the 1981 amendments, Pub. L. 97–35, making several changes in the agency's policies on employee participation in voluntary standards development activities, and combining Part 1031, Employees Membership and Participation in Voluntary Standards Organizations, and Part 1032, Commission Involvement in Voluntary Standards Activities, into a revised Part 1031, Commission Participation and Commission Employee Involvement in Voluntary Standards Activities. 54 FR 6652.

Explanation of Revisions and Additions in Part 1031

1. Revisions to 16 CFR 1031.2 Background and 1031.9(c)(1) Purpose and Scope To More Accurately Reflect the Effect of Executive and Legislative Enactments Pertaining to Voluntary Standards

The existing regulation is inaccurate with respect to the legal effect of OMB Circular No. A–119, as this document does not apply to CPSC rulemaking activities. Additionally, the current regulation needs to be updated to include reference to 1990 Consumer Product Safety Information Act (CPSIA), a statute which provides further Congressional guidance on agency management of voluntary standards.

2. Revisions To Ensure That Voluntary Standards Activities Stem From the Operating Plan, Performance Budget, or Other Official Expressions of Commission Intent

Given the existence of thousands of voluntary standards, the Commission must act judiciously in selecting the appropriate activities in which to engage. The current regulation does not make reference to the existing agency practice of permitting staff to participate only in those activities specifically identified in the operating plan, performance budget, mid-year review, or other official Commission document. Where appropriate, Part 1031 should include language to permit staff involvement in only those standards expressly approved by the Commission.

3. Revisions to 16 CFR 1031.6 To Eliminate Monitoring/Participating Distinction Regarding Degrees of Employee Involvement in Standards Activities

16 CFR 1031.6 sets forth to different levels of staff involvement in voluntary standards activities, monitoring and participation. while this distinction may have initially served some purpose, the agency has over time adopted a more pragmatic approach to oversee staff involvement generally with less focus on the extent of the involvement. To more accurately reflect the current practice of oversight of staff involvement in voluntary standards activities, the regulation requires revision.

4. Revisions to CFR 1031.9 To Clarify Reporting Requirements of Staff to the Voluntary Standards Coordinator

Under § 1031.9(d), staff must obtain management approval prior to participation in voluntary standards activities. Once approved, however, there is no provision to ensure the ongoing oversight of their involvement. To address this deficiency, the regulation should incorporate specific reporting requirements that staff must fulfill for the duration of their involvement with any particular standard. This revision has the added effect of improving internal management practices by placing all staff activities in the voluntary standards arena under the oversight of the Voluntary Standards Coordinator.

5. Addition of Subpart C To Codify Existing Internet Disclosure and Public Comment Procedures

In October, 2004, the CPSC launched a six month pilot program to provide the public with information on voluntary standards and to provide an advance notice on CPSC staff positions for public review and comment for a limited number of voluntary standard activities. The primary goal of the program was to make the staff's activities more transparent and to obtain the benefit of public review and input before finalizing CPSC staff positions. In August, 2005, following the staff's recommendation, the Commission voted unanimously to continue the program and expand it to include links on the CPSC Web site with information pertaining to all of our voluntary standards activities. ''Internet vetting'' of staff involvement in voluntary standards activities represents a significant step to improving transparency of staff activities and is consistent with the agency's mission and goals.

List of Subjects in 16 CFR Part 1031

Business and industry, Consumer protection, Voluntary standards.

■ For the reasons stated in the preamble, 16 CFR part 1031 is revised to read as follows:

PART 1031—COMMISSION PARTICIPATION AND COMMISSION EMPLOYEE INVOLVEMENT IN VOLUNTARY STANDARDS ACTIVITIES

Sec.

Subpart A—General Policies

Subpart B—Employee Involvement

Subpart C—Public Participation and Comment

Authority: 15 U.S.C. 2051–2083; 15 U.S.C. 1261–1276; 15 U.S.C. 1191–1204.

Subpart A—General Policies

§ 1031.1 Purpose and scope.

(a) This part 1031 sets forth the Consumer Product Safety Commission's guidelines and requirements on participating in the activities of voluntary standards bodies. Subpart A sets forth general policies on Commission involvement, and subpart B sets forth policies and guidelines on employee involvement in voluntary standards activities. Subpart C sets forth the criteria governing public review and comment on staff involvement in voluntary standards activities.

(b) For purposes of both subpart A and subpart B of this part 1031, voluntary standards bodies are private sector domestic or multinational organizations or groups, or combinations thereof, such as, but not limited to, all non-profit organizations, industry associations, professional and technical societies, institutes, and test laboratories, that are involved in the planning, development, establishment, revision, review or coordination of voluntary standards. Voluntary standards development bodies are voluntary standards bodies, or their sub-groups, that are devoted to developing or establishing voluntary standards.

§ 1031.2 Background.

(a) Congress enacted the Consumer Product Safety Act in 1972 to protect consumers against unreasonable risks of injury associated with consumer products. In order to achieve that goal, Congress established the Consumer Product Safety Commission as an independent regulatory agency and granted it broad authority to promulgate mandatory safety standards for consumer products as a necessary alternative to industry self regulation.

(b) In 1981, the Congress amended the Consumer Product Safety Act, the Federal Hazardous Substances Act, and the Flammable Fabrics Act, to require the Commission to rely on voluntary standards rather than promulgate a mandatory standard when voluntary standards would eliminate or adequately reduce the risk of injury addressed and it is likely that there will be substantial compliance with the voluntary standards. (15 U.S.C. 2056(b), 15 U.S.C. 1262(g)(2), 15 U.S.C. 1193(h)(2)). The 1981 Amendments also require the Commission, after any notice or advance notice of proposed rulemaking, to provide technical and administrative assistance to persons or groups who propose to develop or modify an appropriate voluntary standard. (15 U.S.C. 2054(a)(3)). Additionally, the amendments encourage the Commission to provide technical and administrative assistance to groups developing product safety standards and test methods, taking into account Commission resources and priorities (15 U.S.C. 2054(a)(4)). Although the Commission is required to provide assistance to such groups, it may determine the level of assistance in accordance with the level of its own administrative and technical resources and in accordance with its assessment of the likelihood that the groups being assisted will successfully develop a voluntary standard that will preclude the need for a mandatory standard.

(c) In 1990, Congress passed the Consumer Product Safety Improvement Act (CPSIA), amending section 15(b) of the CPSA to require that manufacturers, distributors, and retailers notify the Commission about products that fail to comply with an applicable voluntary standard upon which the Commission has relied under section 9 of the CPSA. CPSIA also amended section 9(b)(2) of the CPSA to require that the CPSC afford interested persons the opportunity to comment regarding any voluntary standard prior to CPSC termination and reliance.

§ 1031.3 Consumer Product Safety Act amendments.

The Consumer Product Safety Act, as amended, contains several sections pertaining to the Commission's participation in the development and use of voluntary standards.

(a) Section 7(b) provides that the Commission shall rely on voluntary consumer product safety standards prescribing requirements described in subsection (a) whenever compliance with such voluntary standards would eliminate or adequately reduce the risk of injury addressed and it is likely that there will be substantial compliance with such voluntary standards. (15 U.S.C. 2056(b)).

(b) Section 5(a)(3) provides that the Commission shall, following publication of an advance notice of proposed rulemaking or a notice of proposed rulemaking for a product safety rule under any rulemaking authority administered by the Commission, assist public and private organizations or groups of manufacturers, administratively and technically, in the development of safety standards addressing the risk of injury identified in such notice. (15 U.S.C. 2054(a)(3)).

(c) Section 5(a)(4) provides that the Commission shall, to the extent practicable and appropriate (taking into account the resources and priorities of the Commission), assist public and private organizations or groups of manufacturers, administratively and technically, in the development of product safety standards and test methods. (15 U.S.C. 2054(a)(4)).

§ 1031.4 Effect of voluntary standards activities on Commission activities.

(a)(1) The Commission, in determining whether to begin proceedings to develop mandatory standards under the acts it administers, considers whether mandatory regulation is necessary or whether there is an existing voluntary standard that adequately addresses the problem and the extent to which that voluntary standard is complied with by the affected industry.

(2) The Commission acknowledges that there are situations in which adequate voluntary standards, in combination with appropriate certification programs, may be appropriate to support a conclusion that a mandatory standard is not necessary. The Commission may find that a mandatory standard is not necessary where compliance with an existing voluntary standard would eliminate or adequately reduce the risk of injury associated with the product, contains requirements and test methods that have been evaluated and found acceptable by the Commission, and it is likely that there will be substantial and timely compliance with the voluntary standard. Under such circumstances, the Commission may agree to encourage industry compliance with the voluntary standard and subsequently evaluate the effectiveness of the standard in terms of accident and injury reduction for products produced in compliance with the standard.

(3) In evaluating voluntary standards, the Commission will relate the requirements of the standard to the identified risks of injury and evaluate the requirements in terms of their effectiveness in eliminating or reducing the risks of injury. The evaluation of voluntary standards will be conducted by Commission staff members, including representatives of legal, economics, engineering, epidemiological, health sciences, human factors, other appropriate interests, and the Voluntary Standards Coordinator. The staff evaluation will be conducted in a manner similar to evaluations of standards being considered for promulgation as mandatory standards.

(4) In the event that the Commission has evaluated an existing voluntary standard and found it to be adequate in all but a few areas, the Commission may defer the initiation of a mandatory

rulemaking proceeding and request the voluntary standards organization to revise the standard to address the identified inadequacies expeditiously.

(b) In the event the Commission determines that there is no existing voluntary standard that will eliminate or adequately reduce a risk of injury the Commission may commence a proceeding for the development of a consumer product safety rule or a regulation in accordance with section 9 of the Consumer Product Safety Act, 15 U.S.C. 2058, section 3(f) of the Federal Hazardous Substances Act, 15 U.S.C. 1262(f), or section 4(a) of the Flammable Fabrics Act, 15 U.S.C. 1193(g), as may be applicable. In commencing such a proceeding, the Commission will publish an advance notice of proposed rulemaking which shall, among other things, invite any person to submit to the Commission an existing standard or portion of an existing standard, or to submit a statement of intention to modify or develop, within a reasonable period of time, a voluntary standard to address the risk of injury.

(c) The Commission will consider those provisions of a voluntary standard that have been reviewed, evaluated, and deemed to be adequate in addressing the specified risks of injury when initiating a mandatory consumer product safety rule or regulation under the Consumer Product Safety Act, the Federal Hazardous Substances Act, or the Flammable Fabrics Act, as may be applicable. Comments will be requested in the advance notice of proposed rulemaking on the adequacy of such voluntary standard provisions.

§ 1031.5 Criteria for Commission involvement in voluntary standards activities.

The Commission will consider the extent to which the following criteria are met in considering Commission involvement in the development of voluntary safety standards for consumer products:

(a) The likelihood the voluntary standard will eliminate or adequately reduce the risk of injury addressed and that there will be substantial and timely compliance with the voluntary standard.

(b) The likelihood that the voluntary standard will be developed within a reasonable period of time.

(c) Exclusion, to the maximum extent possible, from the voluntary standard being developed, of requirements which will create anticompetitive effects or promote restraint of trade.

(d) Provisions for periodic and timely review of the standard, including review for anticompetitive effects, and revision or amendment as the need arises.

(e) Performance-oriented and not design-restrictive requirements, to the maximum practical extent, in any standard developed.

(f) Industry arrangements for achieving substantial and timely industry compliance with the voluntary standard once it is issued, and the means of ascertaining such compliance based on overall market share of product production.

(g) Provisions in the standard for marking products conforming to the standard so that future Commission investigation can indicate the involvement of such products in accidents and patterns of injury.

(h) Provisions for insuring that products identified as conforming to such standards will be subjected to a testing and certification (including self-certification) procedure, which will provide assurance that the products comply with the standard.

(i) The openness to all interested parties, and the establishment of procedures which will provide for meaningful participation in the development of such standards by representatives of producers, suppliers, distributors, retailers, consumers, small business, public interests and other individuals having knowledge or expertise in the areas under consideration, and procedures for affording other due process considerations.

§ 1031.6 Extent and form of Commission involvement in the development of voluntary standards.

(a) The extent of Commission involvement will be dependent upon the Commission's interest in the particular standards development activity and the Commission's priorities and resources.

(b) The Commission's interest in a specific voluntary standards activity will be based in part on the frequency and severity of injuries associated with the product, the involvement of the product in accidents, the susceptibility of the hazard to correction through standards, and the overall resources and priorities of the Commission. Commission involvement in voluntary standards activities generally will be guided by the Commission's operating plan and performance budget.

(c) Commission involvement in voluntary standards activities varies.

(1) The Commission staff may maintain an awareness of the voluntary standards development process through oral or written inquiries, receiving and reviewing minutes of meetings and copies of draft standards, or attending meetings for the purpose of observing and commenting during the standards development process in accordance with subpart B of this part. For example, Commission staff may respond to requests from voluntary standards organizations, standards development committees, trade associations and consumer organizations; by providing information concerning the risks of injury associated with particular products, National Electronic Injury Surveillance System (NEISS) data, death, injury, and incident data, summaries and analyses of in-depth investigation reports; discussing Commission goals and objectives with regard to voluntary standards and improved consumer product safety; responding to requests for information concerning Commission programs; and initiating contacts with voluntary standards organizations to discuss cooperative voluntary standards activities.

(2) Employee involvement may include membership as defined in § 1031.10(a). Commission staff may regularly attend meetings of a standard development committee or group and take an active part in the discussions of the committee and in developing the standard, in accordance with subpart B of this part. The Commission may contribute to the deliberations of the committee by expending resources to provide technical assistance (e.g., research, engineering support, and information and education programs) and administrative assistance (e.g., travel costs, hosting meetings, and secretarial functions) in support of the development and implementation of those voluntary standards referenced in the Commission's operating plan, performance budget, mid-year review, or other official Commission document. The Commission may also support voluntary standards activities as described in § 1031.7. Employee involvement may include observation as defined in § 1031.10(c).

(d) Normally, the total amount of Commission support given to a voluntary standards activity shall be no greater than that of all non-Federal participants in that activity, except where it is in the public interest to do so.

(e) In the event of duplication of effort by two or more groups (either inside or outside the Commission) in developing a voluntary standard for the same product or class of products, the Commission shall encourage the several groups to cooperate in the development of a single voluntary standard.

§ 1031.7 Commission support of voluntary standards activities.

(a) The Commission's support of voluntary safety standards development activities may include any one or a combination of the following actions:

(1) Providing epidemiological and health science information and explanations of hazards for consumer products.

(2) Encouraging the initiation of the development of voluntary standards for specific consumer products.

(3) Identifying specific risks of injury to be addressed in a voluntary standard.

(4) Performing or subsidizing technical assistance, including research, health science data, and engineering support, in the development of a voluntary standard activity in which the Commission staff is participating.

(5) Providing assistance on methods of disseminating information and education about the voluntary standard or its use.

(6) Performing a staff evaluation of a voluntary standard to determine its adequacy and efficacy in reducing the risks of injury that have been identified by the Commission as being associated with the use of the product.

(7) Encouraging state and local governments to reference or incorporate the provisions of a voluntary standard in their regulations or ordinances and to participate in government or industrial model code development activities, so as to develop uniformity and minimize conflicting State and local regulations.

(8) Monitoring the number and market share of products conforming to a voluntary safety standard.

(9) Providing for the involvement of agency personnel in voluntary standards activities as described in subpart B of this part.

(10) Providing administrative assistance, such as hosting meetings and secretarial assistance.

(11) Providing funding support for voluntary standards development, as permitted by the operating plan, performance budget, mid-year review, or other official Commission document.

(12) Taking other actions that the Commission believes appropriate in a particular situation.

(b) [Reserved]

§ 1031.8 Voluntary Standards Coordinator.

(a) The Executive Director shall appoint a Voluntary Standards Coordinator to coordinate agency participation in voluntary standards bodies so that:

(1) The most effective use is made of agency personnel and resources, and

(2) The views expressed by such personnel are in the public interest and, at a minimum, do not conflict with the interests and established views of the agency.

(b) The Voluntary Standards Coordinator is responsible for managing the Commission's voluntary standards program, as well as preparing and submitting to the Commission a semiannual summary of staff's voluntary standards activities. The summary shall set forth, among other things, the goals of each voluntary standard under development, the extent of CPSC staff activity, the current status of standards development and implementation, and, if any, recommendations for additional Commission action. The Voluntary Standards Coordinator shall also compile information on the Commission's voluntary standards activities for the Commission's annual report.

Subpart B—Employee Involvement

§ 1031.9 Purpose and scope.

(a) This subpart sets forth the Consumer Product Safety Commission's criteria and requirements governing membership and involvement by Commission officials and employees in the activities of voluntary standards development bodies.

(b) The Commission realizes there are advantages and benefits afforded by greater involvement of Commission personnel in the standards activities of domestic and international voluntary standards organizations. However, such involvement might present an appearance or possibility of the Commission giving preferential treatment to an organization or group or of the Commission losing its independence or impartiality. Also, such involvement may present real or apparent conflict of interest situations.

(c) The purpose of this subpart is to further the objectives and programs of the Commission and to do so in a manner that ensures that such involvement:

(1) Is consistent with the intent of the Consumer Product Safety Act and the other acts administered by the Commission;

(2) Is not contrary to the public interest;

(3) Presents no real or apparent conflict of interest, and does not result in or create the appearance of the Commission giving preferential treatment to an organization or group or the Commission compromising its independence or impartiality; and

(4) Takes into account Commission resources and priorities.

(d) Commission employees must obtain approval from their supervisor and the Office of the Executive Director to be involved in voluntary standards activities. They must regularly report to the Voluntary Standards Coordinator regarding their involvement in standards activities, and provide copies of all official correspondence and other communications between the CPSC and the standards developing entities.

(e) All Commission employees involved in voluntary standards activities are subject to any restrictions for avoiding conflicts of interest and for avoiding situations that would present an appearance of bias.

§ 1031.10 Definitions.

For purposes of describing the level of involvement in voluntary standards activities for which Commission employees may be authorized, the following definitions apply:

(a) *Membership.* Membership is the status of an employee who joins a voluntary standards development or advisory organization or subgroup and is listed as a member. It includes all oral and written communications which are incidental to such membership.

(b) *Employee involvement.* Employee involvement may include the active, ongoing involvement of an official or employee in the development of a new or revised voluntary standard pertaining to a particular consumer product or to a group of products that is the subject of a Commission voluntary standards project. These projects should be those that are approved by the Commission, either by virtue of the agency's annual budget or operating plan, or by other specific agency authorization or decision, and are in accord with subpart A. Employee involvement may include regularly attending meetings of a standards development committee or group, taking an active part in discussions and technical debates, expressing opinions and expending other resources in support of a voluntary standard development activity. It includes all oral and written communications which are part of the process. Employee involvement may also involve maintaining an awareness related to general voluntary standards projects set forth in the agency's annual budget or operating plan or otherwise approved by the agency.

(c) *Observation.* Observation is the attendance by an official or employee at a meeting of a voluntary standards development group for the purpose of observing and gathering information.

§ 1031.11 Procedural safeguards.

(a) Subject to the provisions of this subpart and budgetary and time constraints, Commission employees may be involved in voluntary standards activities that will further the objectives and programs of the Commission, are consistent with ongoing and anticipated Commission regulatory programs as set forth in the agency's operating plan, and are in accord with the Commission's policy statement on involvement in voluntary standards activities set forth in subpart A of this part.

(b) Commission employees who are involved in the development of a voluntary standard and who later participate in an official evaluation of that standard for the Commission shall describe in any information, oral or written, presented to the Commission, the extent of their involvement in the development of the standard. Any evaluation or recommendation for Commission actions by such employee shall strive to be as objective as possible and be reviewed by higher-level Commission officials or employees prior to submission to the Commission.

(c) Involvement of a Commission official or employee in a voluntary standards committee shall be predicated on an understanding by the voluntary standards group that such involvement by Commission officials and employees is on a non-voting basis.

(d) In no case shall Commission employees or officials vote or otherwise formally indicate approval or disapproval of a voluntary standard during the course of a voluntary standard development process.

(e) Commission employees and officials who are involved in the development of voluntary standards may not accept voluntary standards committee leadership positions, e.g., committee chairman or secretary. Subject to prior approval by the Executive Director, the Voluntary Standards Coordinator may accept leadership positions with the governing bodies of standards making entities.

(f) Attendance of Commission personnel at voluntary standards meetings shall be noted in the public calendar and meeting summaries shall be submitted to the Office of the Secretary as required by the Commission's meetings policy, 16 CFR part 1012.

§ 1031.12 Membership criteria.

(a) The Commissioners, their special assistants, and Commission officials and employees holding the positions listed below, may not become members of a voluntary standards group because they either have the responsibility for making final decisions, or advise those who make final decisions, on whether to rely on a voluntary standard, promulgate a consumer product safety standard, or to take other action to prevent or reduce an unreasonable risk of injury associated with a product.

(1) The Commissioners;

(2) The Commissioners' Special Assistants;

(3) The General Counsel and General Counsel Staff;

(4) The Executive Director, the Deputy Executive Director, and Special Assistants to the Executive Director;

(5) The Associate Executive Directors and Office Directors;

(6) The Assistant Executive Director of the Office of Hazard Identification and Reduction, the Deputy Assistant Executive Director of the Office of Hazard Identification and Reduction and any Special Assistants to the Assistant Executive Director of that office.

(b) All other officials and employees not covered under § 1031.12(a) may be advisory, non-voting members of voluntary standards development and advisory groups with the advance approval of the Executive Director. In particular, the Commission's Voluntary Standards Coordinator may accept such membership.

(c) Commission employees or officials who have the approval of the Executive Director to accept membership in a voluntary standards organization or group pursuant to paragraph (b) of this section shall apprise the General Counsel and the Voluntary Standards Coordinator prior to their acceptance.

(d) Commission officials or employees who desire to become a member of a voluntary standards body or group in their individual capacity must obtain prior approval of the Commission's Ethics Counselor for an outside activity pursuant to the Commission's Employee Standards of Conduct, 16 CFR part 1030.

§ 1031.13 Criteria for Employee Involvement.

(a) Commission officials, other than those positions listed in § 1031.12(a), may be involved in the development of voluntary safety standards for consumer products, but only in their official capacity as employees of the Commission and if permitted to do so by their supervisor and any other person designated by agency management procedures. Such involvement shall be in accordance with Commission procedures.

(b) Employees in positions listed in § 1031.12(a)(4), (5), and (6) may be involved, on a case-by-case basis, in the development of a voluntary standard provided that they have the specific advance approval of the Commission.

(c) Except in extraordinary circumstances and when approved in advance by the Executive Director in accordance with the provisions of the Commission's meetings policy, 16 CFR part 1012, Commission personnel shall not become involved in meetings concerning the development of voluntary standards that are not open to the public for attendance and observation. Attendance of Commission personnel at a voluntary standard meeting shall be noted in the public calendar and meeting logs filed with the Office of the Secretary in accordance with the Commission's meetings policy.

(d) Generally, Commission employees may become involved in the development of voluntary standards only if they are made available for comment by all interested parties prior to their use or adoption.

(e) Involvement by Commission officials and employees in voluntary standards bodies or standards-developing groups does not, of itself, connote Commission agreement with, or endorsement of, decisions reached, approved or published by such bodies or groups.

§ 1031.14 Observation criteria.

A Commission official or employee may, on occasion, attend voluntary standards meetings for the sole purpose of observation, with the advance approval of his or her supervisor and any other person designated by agency management procedures. Commission officials and employees shall notify the Voluntary Standard Coordinator, for information purposes, prior to observing a voluntary standards meeting.

§ 1031.15 Communication criteria.

(a) Commission officials and employees, who are not in the positions listed in § 1031.12(a), or who are not already authorized to communicate with a voluntary standards group or representative incidental to their approved membership in a voluntary standard organization or group or as part of a voluntary standard, may:

(1) Communicate, within the scope of their duties, with a voluntary standard group, representative, or other committee member, on voluntary standards matters which are substantive in nature, i.e., matters that pertain to the formulation of the technical aspects of a specific voluntary standard or the course of conduct for developing the standard, only with the specific advance approval from the person or persons to whom they apply to obtain approval for

involvement pursuant to § 1031.13. The approval may indicate the duration of the approval and any other conditions.

(2) Communicate, within the scope of their duties, with a voluntary standard group, representative, or other committee member, concerning voluntary standards activities which are not substantive in nature.

(b) Commission employees may communicate with voluntary standards organizations only in accordance with Commission procedures.

(c) Commissioners can engage in substantive and non-substantive written communications with voluntary standards bodies or representatives, provided a disclaimer in such communications indicates that any substantive views expressed are only their individual views and are not necessarily those of the Commission. Where a previous official Commission vote has taken place, that vote should also be noted in any such communication. Copies of such communications shall thereafter be provided to the other Commissioners, the Office of the Secretary, and the Voluntary Standards Coordinator.

(d) The Voluntary Standards Coordinator shall be furnished a copy of each written communication of a substantive nature and a report of each oral communication of a substantive nature between a Commission official or employee and a voluntary standards organization or representative which pertains to a voluntary standards activity. The information shall be provided to the Voluntary Standards Coordinator as soon as practicable after the communication has taken place.

Subpart C—Public Participation and Comment

§ 1031.16 Purpose and scope.

(a) This subpart sets forth the Consumer Product Safety Commission's criteria and requirements governing public review and comment on staff involvement in the activities of voluntary standards development bodies.

(b) The Commission realizes there are advantages and benefits afforded by greater public awareness of staff involvement in standards development activities. Furthermore, the Commission recognizes public comment and input as an important part of the voluntary standards development process.

(c) The purpose of this subpart is to further the objectives and programs of the Commission and to do so in a manner that ensures openness and transparency.

§ 1031.17 Background.

(a) In a **Federal Register** Notice (Vol. 69, No. 200) dated October 18, 2004, the CPSC announced that it was launching a pilot program to open CPSC staff activities for public review and comment. The pilot program covered information on CPSC staff participation with respect to a cross-section of voluntary standards, including advance notice of proposed staff positions on issues to be considered by voluntary standards organizations. The program was based on the premise that increased public awareness and participation would enhance the quality and conclusions of the proposed recommendations made by CPSC staff.

(b) The pilot program ended on April 18, 2005, after a 6-month period. CPSC invited general comments on whether to continue the programs beyond the pilot period and solicited suggestions for improving the program.

(c) On July 28, 2005, the CPSC staff submitted to the Commission an assessment of the pilot program's results, including data that indicated the voluntary standards site ranked among the top 20 directories visited on the CPSC Web site. Further, the report included the staff's recommendation that the voluntary standards Web site be expanded to include information on all standards activities.

(d) On August 4, 2005, in accordance with the staff's recommendation, the Commission voted unanimously to continue the voluntary standards program and expand it to include all voluntary standards activities.

§ 1031.18 Method of review and comment.

(a) Each of the voluntary standards activities in which Commission staff is involved shall have a unique Web link on the Commission Web site with relevant information regarding CPSC activity, including:

(1) The name(s) of CPSC staff working on the activity; and

(2) The e-mail and mailing addresses of the CPSC Office of the Secretary, to which any interested party may communicate their particular interest.

(b) E-mail and written comments on voluntary standards from the public to the CPSC shall be managed by the Office of the Secretary. Such communication shall be forwarded to appropriate staff for consideration and/or response.

(c) On the voluntary standards Web site, consumers shall have the opportunity to register for periodic e-mail notices from the Commission with respect to their standard of interest. Such notices shall be issued by the CPSC each time a voluntary standard site has been updated and no less than once every calendar year.

Dated: June 30, 2006.

Alberta E. Mills,

Acting Secretary, Consumer Product Safety Commission.

[FR Doc. E6–10572 Filed 7–7–06; 8:45 am]

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DEPARTMENT OF DEFENSE

Office of the Secretary

[DoD–2006–OS–0065]

32 CFR Parts 43 and 50

RIN 0790–AH87

Personal Commercial Solicitation on DoD Installations

AGENCY: Department of Defense, Office of the Secretary of Defense.

ACTION: Final rule.

SUMMARY: This rule amends and removes the Department regulations relating to policy and procedures on personal commercial solicitation on DoD installations. It incorporates current policy letters that were issued since the last publication of the regulations in February 1986. They include policy on use of on-base financial institutions and non-profit, tax exempt, private organizations to provide financial education; limits on the use of commercial sponsorship to obtain personal contact information for solicitation; and required reporting of solicitation policy violations to higher headquarters. The revision also includes a new solicitation evaluation form to help installations detect solicitation policy violations.

DATES: *Effective Date:* July 10, 2006.

FOR FURTHER INFORMATION CONTACT: Colonel Michael A. Pachuta or Mr. James M. Ellis at (703) 602–4994 or (703) 602–5009 respectively, or main (703) 602–5001.

SUPPLEMENTARY INFORMATION: On Tuesday, April 19, 2005 (70 FR 20316), the Department of Defense published a proposed rule. The following is a summary of substantive comments, whether or not they were accepted or rejected, and the rationale.

Comment 1: DepSecDef Memo, DoD Instructions Review—Phase II directed, where feasible, to change Directives not requiring the SECDEF or DEPSEC signature to Instructions.

Decision: Accepted. 1344.7 does not meet the DepSecDef's criteria to remain a DoD Directive and will be reissued as a DoD Instruction.

Comment 2: Two civilians recommended all on-post insurance solicitation be banned.

Decision: Rejected: The purpose of the Instruction is not to prohibit insurance solicitation but to prevent unfair and predatory sales practices.

Comment 3: The American Council of Life Insurers recommends the solicitation office supervisor send a copy of each solicitation evaluation form received to each registered company or company the solicitor represents.

Decision: Rejected: The solicitation evaluation form is an internal feedback tool to assess how the solicitation was performed. The agent or company may request a copy by submitting a Freedom of Information Act request.

Comment 4: A Marine Corps Captain recommends an on-base entity, such as a civil law officer from base legal office, screen insurance sales personnel seeking base access.

Decision: Accepted. Para 6.2.2. now states: ''Commanders will ensure the agent's license status and complaint history are checked with the appropriate state or federal regulators prior to granting permission to solicit on the installation.''

Comment 5: Military Benefits Association believes DD Form 2885 (solicitation evaluation) is biased, recommends it be rewritten to remove any propensity to evoke a critical response, and a copy of submitted forms should be provided to both the agent and insurer.

Decision: Rejected. The questions are balanced and necessary to determine whether or not the solicitor complied with DoD commercial solicitation policy. The commander has the discretion to provide the agent and insurer a copy of the form. The agent or insurer can also request a copy of completed forms under the Freedom of Information Act.

Comment 6: Government Personnel Mutual Life Insurance recommends DD Form 2885 (solicitation evaluation) be made available to the company the salesman represents.

Decision: Rejected. The commander should have the discretion to provide the form to the company when it is appropriate to do so. The agent or company can request a copy of completed forms under the Freedom of Information Act.

Comment 7: United Services Automobile Association recommends DoD prohibit solicitation of all trainees as well as solicitation of any DoD personnel in a mass or captive audience.

Decision: Accepted. The current policy prohibits solicitation of recruits, trainees and transient personnel in a mass audience, which is appropriate to protect the most junior and inexperienced DoD personnel from potential chain of command and peer pressure associated with such a solicitation. The new policy prohibits solicitation of any DoD personnel in a captive audience where their attendance is not completely voluntary.

Comment 8: First Command requested clarification of ''on-duty status'' and to exclude meal times from being considered ''duty time'' for the purposes of prohibiting solicitation.

Decision: Partially accepted. If the purpose of the on-base meal time meeting is to seek business or trade, it is considered solicitation. To clarify, we expanded the definition of Personal Commercial Solicitation in paragraph E2.1.15. as follows: ''Personal contact, to include meetings, meals or telecommunications contact, for the purpose of seeking private business or trade''.

Comment 9: Military Benefits Association agrees that rosters and other official lists should not be used for solicitation; however, they believe there are many legitimate sources, i.e., telephone directories, the Internet, and commercially available mailing lists, the procurement of which should not be a violation of DoD policy.

Decision: Accepted. We rewrote paragraph 6.4.5. to clarify that it is prohibited to procure ''non-public listings'' of DoD personnel for the purpose of solicitation. Note: DoD telephone directories are ''For Official Use Only'' and are considered ''non-public listings''.

Comment 10: The American Council of Life Insurers recommends paragraph 6.4.5. be changed to clarify that it is permitted to procure ''listings created by or obtained from public information such as e.g., telephone directories, government records other than Defense Department records, and newspapers'' for the purpose of solicitation. ACLI further recommends DoD clarify that: ''Public information can be utilized for the purposes of commercial solicitation of Service members as long as the listing is not directly for DoD personnel or in a manner that would be disruptive to the mission of the Military Departments.''

Decision: Accepted. We rewrote paragraph 6.4.5. to clarify it is prohibited to procure ''non-public listings'' of DoD personnel for the purpose of solicitation.

Comment 11: Military Benefits Association recommends that contacting DoD personnel via a government phone should not be a DoD policy violation if the DoD member provided the number or if the agent did not know it was a government phone.

Decision: Accepted. The new policy does not consider solicitor contact via a government phone a violation if a pre-existing relationship exists between the parties. We have expanded paragraph 6.4.15. to clarify that a pre-existing relationship means the DoD member is a current client and did not request contact to be terminated.

Comment 12: Office of the Connecticut State Attorney General recommends the list of grounds that may result in denial, suspension, or withdrawal of solicitation privileges should also include ''any violations of the law of the state in which the base is located.''

Decision: Accepted. Added to the end of paragraph 6.5.1.1.

Comment 13: First Command recommends SF 1199A (direct deposit sign-up form) be included in the definition of allotment forms solicitors are prohibited to possess.

Decision: Accepted. Added to paragraph 6.5.1.6.

Comment 14: A Marine Corps Captain recommends rewording paragraph 6.5.1.6. to include: ''The possession of and any attempt to obtain supplies of allotment forms used by military departments, or possession or use of facsimiles thereof. This includes using a Service members ''MyPay'' account or other similar internet medium for the purpose of establishing a direct deposit for the purchase of insurance or other investment product.''

Decision: Accepted. Added to paragraph 6.5.1.6.

Comment 15: The National Association of Insurance Commissioners recommends reporting all complaints involving insurance products be reported immediately to the appropriate state insurance department.

Decision: Accepted. Expanded paragraph 6.5.4. to require commanders to immediately report agents, companies or products that fail to meet state or regulatory requirements to the appropriate regulatory authorities.

Comment 16: Trans World Assurance recommends the ''show cause'' requirement in the current version of DoD Directive 1344.7 be retained in the new Instruction.

Decision: Accepted. Paragraph 6.5.5. was rewritten to restore the ''show cause'' requirement.

Comment 17: A Government Accountability Office audit recommends: ''the SecDef direct the USD(P&R) to specify in the revised Directive that the installation commander is responsible for notifying

state insurance regulators, the Service Secretariat and DoD, when the commander has determined that agents or companies have violated DoD, Service, or installation policies.''

Decision: Partially accepted. Not all DoD personal commercial solicitation policy violations, such as soliciting without an appointment or soliciting during duty hours, are not violations of State or Federal law and would be of no interest to State and Federal insurance and financial product regulators. Paragraph 6.5.5. was rewritten to require installations to report violations that involve the eligibility of the agent to hold a state license or meet regulatory requirements, complaints involving the quality, suitability or marketing methods, or if an agent or company is barred or suspended, to the appropriate state or federal regulatory authorities.

Comment 18: A civilian recommends DoD require reporting of abusive market conduct (deceptive sales practices) to State insurance regulators.

Decision: Accepted. Added this requirement to paragraph 6.5.5.

Comment 19: A Government Accountability Office audit recommended the SecDef direct USD(P&R) to develop and implement, with the Services, a DoD-wide searchable violations database that uses consistent data elements and coding across Services in revising DoD's solicitation regulation.

Decision: Partially accepted. The Department has developed a DoD-wide list of current enforcement actions and posted it on the DoD Commanders Page Web site *http://www.commanderspage.com*. Paragraph 6.5.6. was expanded to include the requirement for installations to report denial, suspension, or withdrawal of solicitation privileges to PDUSD(P&R) so that information can be included on this list. The Department believes maintaining a list, which includes violations that do not result in denial, suspension, or withdrawal of solicitation privileges, would dilute the validity and utility of the list.

Comment 20: The American Council of Life Insurers recommends DoD guidance found in Title 32 at 43.6(e)(2)(vi) be maintained to assure that, as a matter of due process, the lifting of a denial or withdrawal is communicated effectively to every office and Department.

Decision: Accepted. Expanded paragraph 6.5.7. to require PDUSD(P&R), the Military Departments, and appropriate State and Federal regulatory agencies are notified when suspensions or withdrawals are lifted.

Comment 21: American Fidelity Life Insurance Company recommends the discontinuance of the use of ''off limits'' sanctions by the Armed Forces Disciplinary Control Board (AFDCB).

Decision: Rejected. The long-standing DoD policy contained in paragraph 6.5.8. authorizes the Secretaries of the Military Departments to direct Armed Forces Disciplinary Control Boards to consider applicable information for withdrawal of solicitation privileges and take action the Boards deem appropriate. One action the Boards may deem appropriate is to place an off-base establishment ''off-limits'' to military personnel. That authority must remain available to Commanders as a means to protect the health, morale and welfare of their personnel.

Comment 22: The National Association of Insurance Commissioners recommends DoD prohibit the display of sales material by solicitors since such a display may be interpreted as an endorsement of a company's products.

Decision: Rejected. Paragraph 6.6.4. gives the installation commander the discretion to permit the display of sales literature in designated locations. Commanders must ensure compliance with the Joint Ethics Regulation, which regulates DoD endorsement of non-federal entities.

Comment 23: The Defense Credit Union Council praised DoD for including a prohibition in paragraph 6.6.4. to prohibit off-base banks and credit unions from distributing competitive literature or forms which mirrors guidance contained in Volume 5, Chapter 34 of the DoD Financial Management Regulation.

Decision: Accepted. Added to para 6.6.4.

Comment 24: The Defense Credit Union Council recommends adding language to ensure sales representatives possess the necessary credentials (securities licenses and certifications) to provide financial education and advice.

Decision: Partially accepted. Long-standing DoD policy precludes commercial agents from providing financial education. However, we added a requirement in paragraph 6.2.2. to check insurance and financial product solicitor's license and complaint history.

Comment 25: The Military Benefits Association recommends financial counseling be provided by trained certified personnel, should include information on a wide-range of commercial products and not simply be reinforcement for SGLI.

Decision: Rejected. Paragraph 6.7.1. identifies a wide-range of financial counseling topics and paragraph 6.7.2. requires the Military Departments to ensure financial counselors are qualified.

Comment 26: The Defense Credit Union Council recommends on-base banks and credit unions be required to provide financial education and training.

Decision: Partially accepted. Paragraph 6.7.5. of the Instruction advises Commanders that on-base banks and credit unions are required to provide financial counseling services as part of their financial services offerings but does not mandate their use.

Comment 27: The American Fidelity Insurance Company recommends on-base banks and credit unions not be given preferential treatment in providing financial education classes.

Decision: Rejected. The draft policy does not mandate the use of on-base banks and credit unions to provide financial education and mirrors guidance already contained in the DoD Financial Management Regulation.

Comment 28: The American Council of Life Insurers recommends all financial services professionals, including insurance producers and carriers, be allowed to demonstrate their professional qualifications and ability to provide objective financial counseling services to military service personnel. Or alternatively, that DoD use the services offered by the Life and Health Insurance Foundation for Education (*http://www.life-line.org*) or the National Association of Insurance Commissioners or by the state where a military installation is located to provide financial counseling services.

Decision: Partially accepted. Long-standing DoD policy prohibits the use of commercial agents to provide financial education to DoD personnel. If the other non-governmental organizations, such as the Life and Health Insurance Foundation or the National Association of Insurance Commissioners qualify as 501(c) 3 or 501(c) 23 organizations, the Military Departments can approve them to provide financial education in accordance with paragraph 6.7.6.3.

Comment 29: The Military Officers Association of America recommends the Military Departments be authorized to approve IRS category 501(c) 19 organizations to conduct military benefits and financial education briefings to DoD personnel, that IRS category 501(c) 23 organizations are permitted to provide.

Decision: Rejected. By law, the principal purpose of 501(c) 23 organizations must be to provide insurance and other benefits to veterans and their dependents. 501(c) 19 organizations must be operated for one

or more of eight purposes, which may or may not include providing insurance benefits for its members or their dependents.

Comment 30: The National Association of Insurance Commissioners recommends DoD include the NAIC's informational brochure ''Life Insurance for Military Personnel'' in any education program.

Decision: Partially accepted. The NAIC's brochure could be made available for use if the NAIC qualifies as a 501(c) 3 tax exempt organization and secures a memorandum of agreement to become a DoD financial education partner. The Department and NAIC have drafted an MOU to permit use of this brochure in military financial education classes.

Comment 31: First Command recommends DoD delete: ''personal computer banking'' from the definition of ''Financial Services'' in Enclosure 2 or add: ''other financial institutions can provide personal computer banking as long as access can be made via computer and/or internet.''

Decision: Accepted. Deleted ''and personal computer banking'' from parenthetical intended to elaborate on the meaning of ''electronic banking'' in paragraph E2.1.8.

Comment 32: The National Association of Insurance Commissioners recommends the definition of ''insurer'' be changed to: ''an entity licensed by the appropriate department to engage in the business of insurance.''

Decision: Accepted. Incorporated into paragraph E2.1.12.

Comment 33: The District of Columbia Government Department of Insurance, Securities and Banking recommends the definition of ''Solicitation'' be stated in the disjunctive rather than the conjunctive to avoid ambiguity.

Decision: Accepted. We revised the definition of ''Personal Commercial Solicitation'' in paragraph E2.1.15. and eliminated all ''conjunctive ambiguities.''

Comment 34: First Command recommends changing the definition of ''Solicitation'' to: ''The act of offering a product of service for sale by a private business including the offering and sale of insurance or securities on a military installation.''

Decision: Rejected. Although these words are in the current Directive's definition of Solicitation, they focus more on what is sold versus how something is sold. Solicitation concerns how something is sold versus what is sold. Therefore, we rewrote the definition in paragraph E2.1.15. to focus the definition of ''Personal Commercial Solicitation'' on how something is sold.

Comment 35: First Command recommends letting the insurance policy suffice as a written description for each product or service the companies intend to market to DoD personnel.

Decision: Partially accepted. Deleted the word ''separate'' before ''written description for each product or service'' in paragraph E3.1. so the policy itself could meet the ''written description requirement'' if all other subsequent prerequisite requirements outlined in this paragraph are met.

Comment 36: The National Association of Insurance Commissioners recommends adding the following to paragraph E3.1.: ''Companies should be able to demonstrate that each form to be used has been approved, where applicable, by the insurance department in which the state is located''.

Decision: Accepted. Added to paragraph E3.1.

Comment 37: Office of the Connecticut Attorney General recommended any insurance product offered for sale by a commercial solicitor must be filed with the insurance commissioner of the state in which the installation is located.

Decision: Accepted. Added the following to paragraph E3.1: ''Companies should be able to demonstrate that each form to be used has been approved, where applicable, by the insurance department of the state where the installation is located. Insurance products solicited to DoD personnel on overseas installations must conform to the standards prescribed by the laws of the state where the company is incorporated.''

Comment 38: First Command recommends DoD prohibit whole life policies with restrictive clauses.

Decision: Rejected. Paragraph E3.1.1.2. requires insurance products sold on DoD installations: ''contain no restrictions by reason of military service or military occupational specialty of the insured, unless such restrictions are clearly indicated on the face of the contract''.

Comment 39: A Marine Corps Captain recommends having companies that sell life insurance have Service members sign a form acknowledging they clearly understand SGLI, and its cost and coverage.

Decision: Accepted. Added paragraph E3.1.1.5. to include a requirement to inform Service members in writing of the cost and availability of government subsidized insurance.

Comment 40: First Command recommends DoD allow annuity contracts to be used to satisfy the requirements in para E3.1.4. for an agent to provide the customer written documentation, which clearly shows how much of the premium for an insurance product with a savings component is allocated to savings and how much is allocated to insurance premiums per year over the life of the policy.

Decision: Accepted. Nothing in the instruction specifically precludes using the annuity contract to fulfill this requirement.

Comment 41: A private citizen recommends prohibiting allotments from military paychecks.

Decision: Rejected. Allotments are for the member's convenience and help ensure financial obligations will still be met when they deploy.

Comment 42: A Government Accountability Office audit recommends SecDef direct the USD(P&R) to clarify the portion of the revised Directive that pertains to the cooling off period that must elapse before junior enlisted personnel can start as an allotment to purchase supplemental life insurance.

Decision: Accepted. Paragraph E3.3.2. was rewritten as follows to make this clarification: ''For personnel in pay grades E–4 and below, in order to provide an opportunity to obtain financial counseling, at least seven calendar days shall elapse between the signing of a life insurance application and the certification of a military pay allotment for any supplemental commercial life insurance. Installation Finance Officers are responsible for ensuring this seven-day cooling-off period is monitored and enforced. The purchaser's commanding officer may grant a waiver of the seven-day cooling-off period requirement for good cause, such as the purchaser's imminent deployment or permanent change of station''.

Comment 43: The American Council of Life Insurers recommends DoD require insurers to be members of the Insurance Marketplace Standards Association (IMSA) in order to be eligible to solicit insurance on DoD installations.

Decision: Rejected. Although requiring IMSA membership would be desirable, the Joint Ethics Regulation prohibits this type of federal endorsement of a non-federal entity and IMSA membership would not necessarily guarantee compliance with DoD policies and IMSA membership also requires payment of a substantial fee.

Comment 44: The American Council of Life Insurers recommends DoD delete

the restriction that insurance agents and general agents approved to solicit on overseas DoD installations may only represent one registered commercial insurance company.

Decision: Rejected. Paragraph E4.3.2. allows this restriction to be waived by the overseas commander if in the best interests of DoD personnel.

Executive Order 12866, ''Regulatory Planning and Review''

It has been determined that 32 CFR part 50 is not a significant regulatory action. The rule does not:

(1) Have an annual effect to the economy of $100 million or more or adversely affect in a material way the economy; a section of the economy; productivity; competition; jobs; the environment; public health or safety; or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another Agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.

Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35)

Section B of Appendix B to this rule contains information collection requirements. As required by the Paperwork Reduction Act (44 U.S.C. Chapter 35), DoD has submitted an information clearance package to the Office of Management and Budget for review. In response to DoD's invitation to comment on any potential paperwork burden associated with this rule (70 FR 28514–28515), no comments were received. However, one favorable comment was forwarded to the Office of Management and Budget during the 30-day review period (71 FR 29319).

Federalism (Executive Order 13132)

This regulatory action does not have federalism implications, as set forth in Executive Order 13132. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

Public Law 96–354, ''Regulatory Flexibility Act'' (5 U.S.C. Chapter 6)

It has been certified that this rule is not subject to the Regulatory Flexibility Act (5 U.S.C. 601) because it would not, if promulgated, have a significant economic impact on a substantial number of small entities.

Section 202, Public Law 104–4, ''Unfunded Mandates Reform Act''

It has been determined that this rule does not involve a Federal mandate that may result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of $100 million or more and that such rulemaking will not significantly or uniquely affect small governments.

List of Subjects in 32 CFR Parts 43 and 50

Consumer protection, Federal buildings and facilities, Government employees, Life insurance, Military personnel.

■ Accordingly, 32 CFR Chapter I, subchapter D is proposed to be amended as follows:

PART 43—[REMOVED]

■ 1. Part 43 is removed.

■ 2. Part 50 is added to read as follows:

PART 50—PERSONAL COMMERCIAL SOLICITATION ON DOD INSTALLATIONS

General Provisions

Sec.

Authority: 5 U.S.C. 301.

General Provisions

§ 50.1 Purpose.

This part:

(a) Implements section 577 of Public Law No. 109–163 (2006) and establishes policy and procedures for personal commercial solicitation on DoD installations.

(b) Continues the established annual DoD registration requirement for the sale of insurance and securities on DoD installations overseas.

(c) Identifies prohibited practices that may cause withdrawal of commercial solicitation privileges on DoD installations and establishes notification requirements when privileges are withdrawn.

(d) Establishes procedures for persons solicited on DoD installations to evaluate solicitors.

(e) Prescribes procedures for providing financial education programs to military personnel.

§ 50.2 Applicability.

This part:

(a) Applies to the Office of the Secretary of Defense, the Military Departments, the Chairman of the Joint Chiefs of Staff, the Combatant Commands, the Office of the Inspector General of the Department of Defense, the Defense Agencies, the DoD Field Activities, and all other organizational entities in the Department of Defense (hereafter referred to collectively as the ''DoD Components'').

(b) Does not apply to services furnished by residential service companies, such as deliveries of milk, laundry, newspapers, and related services to personal residences on the installation requested by the resident and authorized by the installation commander.

(c) Applies to all other personal commercial solicitation on DoD installations. It includes meetings on DoD installations of private, non-profit, tax-exempt organizations that involve commercial solicitation. Attendance at these meetings shall be voluntary and the time and place of such meetings are subject to the discretion of the installation commander or his or her designee.

§ 50.3 Definitions.

Agent. An individual who receives remuneration as a salesperson or whose remuneration is dependent on volume of sales of a product or products. (Also referred to as ''commercial agent'' or ''producer''). In this part, the term ''agent'' includes ''general agent'' unless the content clearly conveys a contrary intent.

''Authorized'' Bank and/or Credit Union. Bank and/or credit union selected by the installation commander through open competitive solicitation to provide exclusive on-base delivery of financial services to the installation under a written operating agreement.

Banking institution. An entity chartered by a State or the Federal Government to provide financial services.

Commercial sponsorship. The act of providing assistance, funding, goods, equipment (including fixed assets), or services to an MWR program or event by an individual, agency, association, company or corporation, or other entity (sponsor) for a specified (limited) period of time in return for public recognition or advertising promotions. Enclosure 9

of DoD Instruction 1015.10 [1] provides general policy governing commercial sponsorship.

Credit union. A cooperative nonprofit association, incorporated under the Credit Union Act (12 U.S.C. 1751), or similar state statute, for the purpose of encouraging thrift among its members and creating a source of credit at a fair and reasonable rate of interest.

DoD installation. For the purposes of this part, any Federally owned, leased, or operated base, reservation, post, camp, building, or other facility to which DoD personnel are assigned for duty, including barracks, transient housing, and family quarters.

DoD personnel. For the purposes of this part, all active duty officers (commissioned and warrant) and enlisted members of the Military Departments and all civilian employees, including nonappropriated fund employees and special Government employees, of the Department of Defense.

Financial services. Those services commonly associated with financial institutions in the United States, such as electronic banking (e.g., ATMs), in-store banking, checking, share and savings accounts, fund transfers, sale of official checks, money orders and travelers checks, loan services, safe deposit boxes, trust services, sale and redemption of U.S. Savings Bonds, and acceptance of utility payments and any other consumer-related banking services.

General agent. A person who has a legal contract to represent a company. See the definition of ''Agent'' in this section.

Insurance carrier. An insurance company issuing insurance through an association reinsuring or coinsuring such insurance.

Insurance product. A policy, annuity, or certificate of insurance issued by an insurer or evidence of insurance coverage issued by a self-insured association, including those with savings and investment features.

Insurer. An entity licensed by the appropriate department to engage in the business of insurance.

Military services. See Joint Publication 1–02, ''DoD Dictionary of Military and Associated Terms.'' [2]

Normal home enterprises. Sales or services that are customarily conducted in a domestic setting and do not compete with an installation's officially sanctioned commerce.

Personal commercial solicitation. Personal contact, to include meetings, meals, or telecommunications contact, for the purpose of seeking private business or trade.

Securities. Mutual funds, stocks, bonds, or any product registered with the Securities and Exchange Commission except for any insurance or annuity product issued by a corporation subject to supervision by State insurance authorities.

Suspension. Temporary termination of privileges pending completion of a commander's inquiry or investigation.

Withdrawal. Termination of privileges for a set period of time following completion of a commander's inquiry or investigation.

§ 50.4 Policy.

(a) It is DoD policy to safeguard and promote the welfare of DoD personnel as consumers by setting forth a uniform approach to the conduct of all personal commercial solicitation and sales to them by dealers and their agents. For those individuals and their companies that fail to follow this policy, the opportunity to solicit on military installations may be limited or denied as appropriate.

(b) Command authority includes authority to approve or prohibit all commercial solicitation covered by this part. Nothing in this part limits an installation commander's inherent authority to deny access to vendors or to establish time and place restrictions on commercial activities at the installation.

§ 50.5 Responsibilities.

(a) The Principal Deputy Under Secretary of Defense for Personnel and Readiness (PDUSD(P&R)), under the Under Secretary of Defense for Personnel and Readiness, shall:

(1) Identify and publish policies and procedures governing personal commercial solicitation on DoD installations consistent with the policy set forth in this part.

(2) Maintain and make available to installation commanders and appropriate Federal personnel the current master file of all individual agents, dealers, and companies who have their privileges withdrawn at any DoD installation.

(3) Develop and maintain a list of all State Insurance Commissioners' points of contact for DoD matters and forward this list to the Military Services.

(b) The Heads of the DoD Components shall:

(1) Ensure implementation of this part and compliance with its provisions.

(2) Require installations under their authority to report each instance of withdrawal of commercial solicitation privileges.

(3) Submit lists of all individuals and companies who have had their commercial solicitation privileges withdrawn at installations under their authority to the PDUSD(P&R) in accordance with this part.

§ 50.6 Procedures.

(a) *General.* (1) No person has authority to enter a DoD installation to transact personal commercial solicitation as a matter of right. Personal commercial solicitation may be permitted only if the following requirements are met:

(i) The solicitor is duly licensed under applicable Federal, State, or municipal laws and has complied with installation regulations.

(ii) A specific appointment has been made for each meeting with the individual concerned. Each meeting is conducted only in family quarters or in other areas designated by the installation commander.

(iii) The solicitor agrees to provide each person solicited the personal commercial solicitation evaluation included in DD Form 2885 [3] during the initial appointment. The person being solicited is not required to complete the evaluation. However, completed evaluations should be sent by the person who was solicited to the office designated by the installation commander on the back of the evaluation form.

(iv) The solicitor agrees to provide DoD personnel with a written reminder, prior to their making a financial commitment, that free legal advice is available from the Office of the Staff Judge Advocate.

(2) Solicitors on overseas installations shall be required to observe, in addition to the above, the applicable laws of the host country. Upon request, the solicitor must present documentary evidence to the installation commander that the company they represent, and its agents, meet the applicable licensing requirements of the host country.

(b) *Life insurance products and securities.* (1) Life insurance products and securities offered and sold to DoD personnel shall meet the prerequisites described in § 50.3.

(2) Installation commanders may permit insurers and their agents to solicit on DoD installations if the requirements of paragraph (a) of this section are met and if they are licensed under the insurance laws of the State

[1] Copies may be obtained at *http://www.dtic.mil/whs/directives/.*

[2] See *http://www.dtic.mil/doctrine/jel/doddict/indexs.html.*

[3] Copies may be obtained from *http://www.dtic.mil/whs/directives/infomgt/forms/forminfo/forminfopage2239.html.*

where the installation is located. Commanders will ensure the agent's license status and complaint history are checked with the appropriate State or Federal regulators before granting permission to solicit on the installation.

(3) In addition, before approving insurance and financial product agents' requests for permission to solicit, commanders shall review the list of agents and companies currently barred, banned, or limited from soliciting on any or all DoD installations. This list may be viewed via the Personal *Commercial Solicitation Report* ''quick link'' at *http://www.commanderspage.com.* In overseas areas, the DoD Components shall limit insurance solicitation to those insurers registered under the provisions of appendix B to this part.

(4) The conduct of all insurance business on DoD installations shall be by specific appointment. When establishing the appointment, insurance agents shall identify themselves to the prospective purchaser as an agent for a specific insurer.

(5) Installation commanders shall designate areas where interviews by appointment may be conducted. The opportunity to conduct scheduled interviews shall be extended to all solicitors on an equitable basis. Where space and other considerations limit the number of agents using the interviewing area, the installation commander may develop and publish local policy consistent with this concept.

(6) Installation commanders shall make disinterested third-party insurance counseling available to DoD personnel desiring counseling. Financial counselors shall encourage DoD personnel to seek legal assistance or other advice from a disinterested third-party before entering into a contract for insurance or securities.

(7) In addition to the solicitation prohibitions contained in paragraph (d) of this section, DoD Components shall prohibit the following:

(i) The use of DoD personnel representing any insurer, dealing directly or indirectly on behalf of any insurer or any recognized representative of any insurer on the installation, or as an agent or in any official or business capacity with or without compensation.

(ii) The use of an agent as a participant in any Military Service-sponsored education or orientation program.

(iii) The designation of any agent or the use by any agent of titles (for example, ''Battalion Insurance Counselor,'' ''Unit Insurance Advisor,'' ''Servicemen's Group Life Insurance Conversion Consultant,'') that in any manner, states, or implies any type of endorsement from the U.S. Government, the Armed Forces, or any State or Federal agency or government entity.

(iv) The use of desk space for interviews for other than a specific prearranged appointment. During such appointment, the agent shall not be permitted to display desk signs or other materials announcing his or her name or company affiliation.

(v) The use of an installation ''daily bulletin,'' marquee, newsletter, Web page, or other official notice to announce the presence of an agent and/or his or her availability.

(c) *Supervision of on-base commercial activities.* (1) All pertinent installation regulations shall be posted in a place easily accessible to those conducting and receiving personal commercial solicitation on the installation.

(2) The installation commander shall make available a copy of installation regulations to anyone conducting on-base commercial solicitation activities warning that failure to follow the regulations may result in the loss of solicitation privileges.

(3) The installation commander, or designated representative, shall inquire into any alleged violations of this part or of any questionable solicitation practices. The DD Form 2885 is provided as a means to supervise solicitation activities on the installation.

(d) *Prohibited practices.* The following commercial solicitation practices shall be prohibited on all DoD installations:

(1) Solicitation of recruits, trainees, and transient personnel in a group setting or ''mass'' audience and solicitation of any DoD personnel in a ''captive'' audience where attendance is not voluntary.

(2) Making appointments with or soliciting military or DoD civilian personnel during their normally scheduled duty hours.

(3) Soliciting in barracks, day rooms, unit areas, transient personnel housing, or other areas where the installation commander has prohibited solicitation.

(4) Use of official military identification cards or DoD vehicle decals by active duty, retired or reserve members of the Military Services to gain access to DoD installations for the purpose of soliciting. When entering the installation for the purpose of solicitation, solicitors with military identification cards and/or DoD vehicle decals must present documentation issued by the installation authorizing solicitation.

(5) Procuring, attempting to procure, supplying, or attempting to supply non-public listings of DoD personnel for purposes of commercial solicitation, except for releases made in accordance with DoD Directive 5400.7.[4]

(6) Offering unfair, improper, or deceptive inducements to purchase or trade.

(7) Using promotional incentives to facilitate transactions or to eliminate competition.

(8) Using manipulative, deceptive, or fraudulent devices, schemes, or artifices, including misleading advertising and sales literature. All financial products, which contain insurance features, must clearly explain the insurance features of those products.

(9) Using oral or written representations to suggest or give the appearance that the Department of Defense sponsors or endorses any particular company, its agents, or the goods, services, and commodities it sells.

(10) DoD personnel making personal commercial solicitations or sales to DoD personnel who are junior in rank or grade, or to the family members of such personnel, except as authorized in Section 2–205 and 5–409 of the Joint Ethics Regulation, DoD 5500.7–R.[5]

(11) Entering into any unauthorized or restricted area.

(12) Using any portion of installation facilities, including quarters, as a showroom or store for the sale of goods or services, except as specifically authorized by DoD Directive 1330.17[6] and DoD Instructions 1015.10, 1000.15[7] and 1330.21.[8] This does not apply to normal home enterprises that comply with applicable State and local laws and installation rules.

(13) Soliciting door to door or without an appointment.

(14) Unauthorized advertising of addresses or telephone numbers used in personal commercial solicitation activities conducted on the installation, or the use of official positions, titles, or organization names, for the purpose of personal commercial solicitation, except as authorized in DoD 5500.7–R. Military grade and Military Service as part of an individual's name (e.g., Captain Smith, U.S. Marine Corps) may be used in the same manner as conventional titles, such as ''Mr.'', ''Mrs.'', or ''Honorable''.

(15) Contacting DoD personnel by calling a government telephone, faxing to a government fax machine, or by sending e-mail to a government computer, unless a pre-existing relationship (i.e., the DoD member is a

[4] See footnote 1 to § 50.3.
[5] See footnote 1 to § 50.3.
[6] See footnote 1 to § 50.3.
[7] See footnote 1 to § 50.3.
[8] See footnote 1 to § 50.3.

current client or requested to be contacted) exists between the parties and the DoD member has not asked for contact to be terminated.

(e) *Denial, suspension, and withdrawal of installation solicitation privileges.* (1) The installation commander shall deny, suspend, or withdraw permission for a company and its agents to conduct commercial activities on the base if such action is in the best interests of the command. The grounds for taking these actions may include, but are not limited to, the following:

(i) Failure to meet the licensing and other regulatory requirements prescribed in this part or violations of the State law where the installation is located. Commanders will request that appropriate state officials determine whether a company or agent violated State law.

(ii) Commission of any of the practices prohibited in paragraphs (b)(6) and (d) of this section.

(iii) Substantiated complaints and/or adverse reports regarding the quality of goods, services, and/or commodities, and the manner in which they are offered for sale.

(iv) Knowing and willful violations of Public Law 90–321.

(v) Personal misconduct by a company's agent or representative while on the installation.

(vi) The possession of, and any attempt to obtain supplies of direct deposit forms, or any other form or device used by Military Departments to direct a Service member's pay to a third party, or possession or use of facsimiles thereof. This includes using or assisting in using a Service member's ''MyPay'' account or other similar Internet medium for the purpose of establishing a direct deposit for the purchase of insurance or other investment product.

(vii) Failure to incorporate and abide by the Standards of Fairness policies contained in DoD Instruction 1344.9.[9]

(2) The installation commander may determine that circumstances dictate the immediate suspension of solicitation privileges while an investigation is conducted. Upon suspending solicitation privileges, the commander shall promptly inform the agent and the company the agent represents, in writing.

(3) In suspending or withdrawing solicitation privileges, the installation commander shall determine whether to limit such action to the agent alone or extend it to the company the agent represents. This decision shall be based on the circumstances of the particular case, including, but not limited to, the nature of the violations, frequency of violations, the extent to which other agents of the company have engaged in such practices and any other matters tending to show the culpability of an individual and the company.

(4) If the investigation determines an agent or company does not possess a valid license or the agent, company, or product has failed to meet other State or Federal regulatory requirements, the installation commander shall immediately notify the appropriate regulatory authorities.

(5) In a withdrawal action, the commander shall allow the individual or company an opportunity to show cause as to why the action should not be taken. To ''show cause'' means an opportunity must be given for the aggrieved party to present facts on an informal basis for the consideration of the installation commander or the commander's designee. The installation commander shall make a final decision regarding withdrawal based upon the entire record in each case. Installation commanders shall report concerns or complaints involving the quality or suitability of financial products or concerns or complaints involving marketing methods used to sell these products to the appropriate State and Federal regulatory authorities. Also, installation commanders shall report any suspension or withdrawal of insurance or securities products solicitation privileges to the appropriate State or Federal regulatory authorities.

(6) The installation commander shall inform the Military Department concerned of any denial, suspension, withdrawal, or reinstatement of an agent or company's solicitation privileges and the Military Department shall inform the Office of the PDUSD(P&R), which will maintain a list of insurance and financial product companies and agents currently barred, banned, or otherwise limited from soliciting on any or all DoD installations. This list may be viewed at *http://www.commanderspage.com.* If warranted, the installation commander may recommend to the Military Department concerned that the action taken be extended to other DoD installations. The Military Department may extend the action to other military installations in the Military Department. The PDUSD(P&R), following consultation with the Military Department concerned, may order the action extended to other Military Departments.

(7) All suspensions or withdrawals of privileges may be permanent or for a set period of time. If for a set period, when that period expires, the individual or company may reapply for permission to solicit through the installation commander or Military Department originally imposing the restriction. The installation commander or Military Department reinstating permission to solicit shall notify the Office of the PDUSD(P&R) and appropriate State and Federal regulatory agencies when such suspensions or withdrawals are lifted.

(8) The Secretaries of the Military Departments may direct the Armed Forces Disciplinary Control Boards in all geographical areas in which the grounds for withdrawal action have occurred to consider all applicable information and take action that the Boards deem appropriate.

(9) Nothing in this part limits the authority of the installation commander or other appropriate authority from requesting or instituting other administrative and/or criminal action against any person, including those who violate the conditions and restrictions upon which installation entry is authorized.

(f) *Advertising and commercial sponsorship.* (1) The Department of Defense expects voluntary observance of the highest business ethics by commercial enterprises soliciting DoD personnel through advertisements in unofficial military publications when describing goods, services, commodities, and the terms of the sale (including guarantees, warranties, and the like).

(2) The advertising of credit terms shall conform to the provisions of 15 U.S.C. 1601 as implemented by Federal Reserve Board Regulation Z according to 12 CFR part 226.

(3) Solicitors may provide commercial sponsorship to DoD Morale, Welfare and Recreation programs or events according to DoD Instruction 1015.10. However, sponsorship may not be used as a means to obtain personal contact information for any participant at these events without written permission from the individual participant. In addition, commercial sponsors may not use sponsorship to advertise products and/or services not specifically agreed to in the sponsorship agreement.

(4) The installation commander may permit organizations to display sales literature in designated locations subject to command policies. In accordance with DoD 7000.14–R,[10] Volume 7(a), distribution of competitive literature or forms by off-base banks and/or credit unions is prohibited on installations where an authorized on-base bank and/or credit union exists.

[9] See footnote 1 to § 50.3.

[10] See footnote 1 to § 50.3.

(g) *Educational programs.* (1) The Military Departments shall develop and disseminate information and provide educational programs for members of the Military Services on their personal financial affairs, including such subjects as insurance, Government benefits, savings, budgeting, and other financial education and assistance requirements outlined in DoD Instruction 1342.27.[11] The Military Departments shall ensure that all instructors are qualified as appropriate for the subject matter presented. The services of representatives of authorized on-base banks and credit unions may be used for this purpose. Under no circumstances shall commercial agents, including representatives of loan, finance, insurance, or investment companies, be used for this purpose. Presentations shall only be conducted at the express request of the installation commander.

(2) The Military Departments shall also make qualified personnel and facilities available for individual counseling on loans and consumer credit transactions in order to encourage thrift and financial responsibility and promote a better understanding of the wise use of credit, as prescribed in DoD 7000.14–R.

(3) The Military Departments shall encourage military members to seek advice from a legal assistance officer, the installation financial counselor, their own lawyer, or a financial counselor, before making a substantial loan or credit commitment.

(4) Each Military Department shall provide advice and guidance to DoD personnel who have a complaint under DoD 1344.9 or who allege a criminal violation of its provisions, including referral to the appropriate regulatory agency for processing of the complaint.

(5) Banks and credit unions operating on DoD installations are required to provide financial counseling services as an integral part of their financial services offerings. Representatives of and materials provided by authorized banks and/or credit unions located on military installations may be used to provide the educational programs and information required by this part subject to the following conditions:

(i) If the bank or credit union operating on a DoD installation sells insurance or securities or has any affiliation with a company that sells or markets insurance or other financial products, the installation commander shall consider that company's history of complying with this part before authorizing the on-base financial institution to provide financial education.

(ii) All prospective educators must agree to use appropriate disclaimers in their presentations and on their other educational materials. The disclaimers must clearly indicate that they do not endorse or favor any commercial supplier, product, or service, or promote the services of a specific financial institution.

(6) Use of other non-government organizations to provide financial education programs is limited as follows:

(i) Under no circumstances shall commercial agents, including employees or representatives of commercial loan, finance, insurance, or investment companies, be used.

(ii) The limitation in paragraph (g)(6)(i) of this section does not apply to educational programs and information regarding the Survivor Benefits Program and other government benefits provided by tax-exempt organizations under section (c)(23) of 26 U.S.C. 501 or by any organization providing such a benefit under a contract with the Government.

(iii) Educators from non-government, non-commercial organizations expert in personal financial affairs and their materials may, with appropriate disclaimers, provide the educational programs and information required by this part if approved by a Presidentially-appointed, Senate-confirmed civilian official of the Military Department concerned. Presentations by approved organizations shall be conducted only at the express request of the installation commander. The following criteria shall be used when considering whether to permit a non-government, non-commercial organization to present an educational program or provide materials on personal financial affairs:

(A) The organization must qualify as a tax-exempt organization under 5 U.S.C. 501(c)(3) or 5 U.S.C. 501(c)(23).

(B) If the organization has any affiliation with a company that sells or markets insurance or other financial products, the approval authority shall consider that company's history of complying with this part.

(C) All prospective educators must use appropriate disclaimers, in their presentations and on their other educational materials, which clearly indicate that they and the Department of Defense do not endorse or favor any commercial supplier, product, or service or promote the services of a specific financial institution.

[11] See footnote 1 to § 50.3.

§ 50.7 Information requirements.

The reporting requirements concerning the suspension or withdrawal of solicitation privileges have been assigned Report Control Symbol (RCS) DD–P&R(Q)2182 in accordance with DoD 8910.1–M.[12]

Appendix A to Part 50—Life Insurance Products and Securities

A. Life Insurance Product Content Prerequisites

Companies must provide DoD personnel a written description for each product or service they intend to market to DoD personnel on DoD installations. These descriptions must be written in a manner that DoD personnel can easily understand, and fully disclose the fundamental nature of the policy. Companies must be able to demonstrate that each form to be used has been filed with and approved, where applicable, by the insurance department of the State where the installation is located. Insurance products marketed to DoD personnel on overseas installations must conform to the standards prescribed by the laws of the State where the company is incorporated.

1. Insurance products, other than certificates or other evidence of insurance issued by a self-insured association, offered and sold worldwide to personnel on DoD installations, must:

a. Comply with the insurance laws of the State or country in which the installation is located and the requirements of this part.

b. Contain no restrictions by reason of Military Service or military occupational specialty of the insured, unless such restrictions are clearly indicated on the face of the contract.

c. Plainly indicate any extra premium charges imposed by reason of Military Service or military occupational specialty.

d. Contain no variation in the amount of death benefit or premium based upon the length of time the contract has been in force, unless all such variations are clearly described in the contract.

e. In plain and readily understandable language, and in type font at least as large as the font used for the majority of the policy, inform Service members of:

1. The availability and cost of government subsidized Servicemen's Group Life Insurance.

2. The address and phone number where consumer complaints are received by the State insurance commissioner for the State in which the insurance product is being sold.

3. That the U.S. Government has in no way sanctioned, recommended, or encouraged the sale of the product being offered. With respect to the sale or solicitation of insurance on Federal land or facilitates located outside the United States, insurance products must contain the address and phone number where consumer complaints are received by the State insurance commissioner for the State which has issued the agent a resident license or the company is domiciled, as applicable.

[12] See footnote 1 to § 50.3.

2. To comply with paragraphs A.1.b., A.1.c. and A.1.d., an appropriate reference stamped on the first page of the contract shall draw the attention of the policyholder to any restrictions by reason of Military Service or military occupational specialty. The reference shall describe any extra premium charges and any variations in the amount of death benefit or premium based upon the length of time the contract has been in force.

3. Variable life insurance products may be offered provided they meet the criteria of the appropriate insurance regulatory agency and the Securities and Exchange Commission.

4. Insurance products shall not be marketed or sold disguised as investments. If there is a savings component to an insurance product, the agent shall provide the customer written documentation, which clearly explains how much of the premium goes to the savings component per year broken down over the life of the policy. This document must also show the total amount per year allocated to insurance premiums. The customer must be provided a copy of this document that is signed by the insurance agent.

B. Sale of Securities

1. All securities must be registered with the Securities and Exchange Commission.

2. All sales of securities must comply with the appropriate Securities and Exchange Commission regulations.

3. All securities representatives must apply to the commander of the installation on which they desire to solicit the sale of securities for permission to solicit.

4. Where the accredited insurer's policy permits, an overseas accredited life insurance agent—if duly qualified to engage in security activities either as a registered representative of the National Association of Securities Dealers or as an associate of a broker or dealer registered with the Securities and Exchange Commission—may offer life insurance and securities for sale simultaneously. In cases of commingled sales, the allotment of pay for the purchase of securities cannot be made to the insurer.

C. Use of the Allotment of Pay System

1. Allotments of military pay for life insurance products shall be made in accordance with DoD 7000.14–R.

2. For personnel in pay grades E–4 and below, in order to obtain financial counseling, at least seven calendar days shall elapse between the signing of a life insurance application and the certification of a military pay allotment for any supplemental commercial life insurance. Installation Finance Officers are responsible for ensuring this seven-day cooling-off period is monitored and enforced. The purchaser's commanding officer may grant a waiver of the seven-day cooling-off period requirement for good cause, such as the purchaser's imminent deployment or permanent change of station.

D. Associations—General

The recent growth and general acceptability of quasi-military associations offering various insurance plans to military personnel are acknowledged. Some associations are not organized within the supervision of insurance laws of either a State or the Federal Government. While some are organized for profit, others function as nonprofit associations under Internal Revenue Service regulations. Regardless of the manner in which insurance is offered to members, the management of the association is responsible for complying fully with the policies contained in this part.

Appendix B to Part 50—Overseas Life Insurance Registration Program

A. Registration Criteria

1. Initial Registration

a. Insurers must demonstrate continuous successful operation in the life insurance business for a period of not less than 5 years on December 31 of the year preceding the date of filing the application.

b. Insurers must be listed in Best's Life-Health Insurance Reports and be assigned a rating of B+ (Very Good) or better for the business year preceding the Government's fiscal year for which registration is sought.

2. Re-Registration

a. Insurers must demonstrate continuous successful operation in the life insurance business, as described in paragraph A.1.a. of this appendix.

b. Insurers must retain a Best's rating of B+ or better, as described in paragraph A.1.b. of this appendix.

c. Insurers must demonstrate a record of compliance with the policies found in this part.

3. Waiver Provisions

Waivers of the initial registration or re-registration provisions shall be considered for those insurers demonstrating substantial compliance with the aforementioned criteria.

B. Application Instructions

1. *Applications Filed Annually.* Insurers must apply by June 30 of each year for solicitation privileges on overseas U.S. military installations for the next fiscal year beginning October 1. Applications e-mailed, faxed, or postmarked after June 30 shall not be considered.

2. *Application prerequisites.* A letter of application, signed by the President, Vice President, or designated official of the insurance company shall be forwarded to the Principal Deputy Under Secretary of Defense (Personnel and Readiness), Attention: Morale, Welfare and Recreation (MWR) Policy Directorate, 4000 Defense, Pentagon, Washington, DC 20301–4000. The registration criteria in paragraph A1.a. or A1.b. of this appendix must be met to satisfy application prerequisites. The letter shall contain the information set forth below, submitted in the order listed. Where criteria are not applicable, the letter shall so state.

a. The overseas Combatant Commands (e.g., U.S. European Command, U.S. Pacific Command, U.S. Central Command, U.S. Southern Command) where the company presently solicits, or plans to solicit, on U.S. military installations.

b. A statement that the company has complied with, or shall comply with, the applicable laws of the country or countries wherein it proposes to solicit. ''Laws of the country'' means all national, provincial, city, or county laws or ordinances of any country, as applicable.

c. A statement that the products to be offered for sale conform to the standards prescribed in appendix A to this part and contain only the standard provisions such as those prescribed by the laws of the State where the company's headquarters are located.

d. A statement that the company shall assume full responsibility for the acts of its agents with respect to solicitation. If warranted, the number of agents may be limited by the overseas command concerned.

e. A statement that the company shall only use agents who have been licensed by the appropriate State and registered by the overseas command concerned to sell to DoD personnel on DoD installations.

f. Any explanatory or supplemental comments that shall assist in evaluating the application.

g. If the Department of Defense requires facts or statistics beyond those normally involved in registration, the company shall make separate arrangements to provide them.

h. A statement that the company's general agent and other registered agents are appointed in accordance with the prerequisites established in section C of this appendix.

3. If a company is a life insurance company subsidiary, it must be registered separately on its own merits.

C. Agent Requirements

The overseas Combatant Commanders shall apply the following principles in registering agents:

1. An agent must possess a current State license. This requirement may be waived for a registered agent continuously residing and successfully selling life insurance in foreign areas, who, through no fault of his or her own, due to State law (or regulation) governing domicile requirements, or requiring that the agent's company be licensed to do business in that State, forfeits eligibility for a State license. The request for a waiver shall contain the name of the State or jurisdiction that would not renew the agent's license.

2. General agents and agents may represent only one registered commercial insurance company. This principle may be waived by the overseas Combatant Commander if multiple representations are in the best interest of DoD personnel.

3. An agent must have at least 1 year of successful life insurance underwriting experience in the United States or its territories, generally within the 5 years preceding the date of application, in order to be approved for overseas solicitation.

4. The overseas Combatant Commanders may exercise further agent control procedures as necessary.

5. An agent, once registered in an overseas area, may not change affiliation from the staff of one general agent to another and retain registration, unless the previous employer certifies in writing that the release is without justifiable prejudice. Overseas Combatant Commanders will have final authority to

determine justifiable prejudice. Indebtedness of an agent to a previous employer is an example of justifiable prejudice.

D. Announcement of Registration

1. Registration by the Department of Defense upon annual applications of insurers shall be announced as soon as practicable by notice to each applicant and by a list released annually in September to the appropriate overseas Combatant Commanders. Approval does not constitute DoD endorsement of the insurer or its products. Any advertising by insurers or verbal representation by its agents, which suggests such endorsement, is prohibited.

2. In the event registration is denied, specific reasons for the denial shall be provided to the applicant.

a. The insurer shall have 30 days from the receipt of notification of denial of registration (sent certified mail, return receipt requested) in which to request reconsideration of the original decision. This request must be in writing and accompanied by substantiating data or information in rebuttal of the specific reasons upon which the denial was based.

b. Action by the Office of the PDUSD(P&R) on a request for reconsideration is final.

c. An applicant that is presently registered as an insurer shall have 90 calendar days from final action denying registration in which to close operations.

3. Upon receiving an annual letter approving registration, each company shall send to the applicable overseas Combatant Commander a verified list of agents currently registered for overseas solicitation. Where applicable, the company shall also include the names and prior military affiliation of new agents for whom original registration and permission to solicit on base is requested. Insurers initially registered shall be furnished instructions by the Department of Defense for agent registration procedures in overseas areas.

4. Material changes affecting the corporate status and financial condition of the company that occur during the fiscal year of registration must be reported to the MWR Policy Directorate at the address in paragraph B.2. of this appendix as they occur.

a. The Office of the PDUSD(P&R) reserves the right to terminate registration if such material changes appear to substantially affect the financial and operational standards described in section A of this appendix on which registration was based.

b. Failure to report such material changes may result in termination of registration regardless of how it affects the standards.

5. If an analysis of information furnished by the company indicates that unfavorable trends are developing that could adversely affect its future operations, the Office of the PDUSD(P&R) may, at its option, bring such matters to the attention of the company and request a statement as to what action, if any, is considered to deal with such unfavorable trends.

Dated: June 27, 2006.

L.M. Bynum,

OSD Federal Register Liaison Officer, DoD.

[FR Doc. E6–10360 Filed 7–7–06; 8:45 am]

BILLING CODE 5001–06–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[Docket No. EPA–R02–OAR–2006–0342; FRL–8191–2]

Approval and Promulgation of Implementation Plans; Carbon Monoxide Maintenance Plan, Conformity Budgets, Emissions Inventories; State of New Jersey

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving a State Implementation Plan (SIP) revision submitted by the State of New Jersey. This revision establishes an updated ten-year carbon monoxide (CO) maintenance plan for the Nine Not-Classified Areas in the State (the City of Atlantic City, the City of Burlington, the Borough of Freehold, the Town of Morristown, the Borough of Penns Grove, the City of Perth Amboy, the Borough of Somerville, the Toms River Area, and the City of Trenton) and Camden County. In addition, this action approves revisions to the CO, NO_X, VOC, and $PM_{2.5}$ motor vehicle emissions budgets for Northern New Jersey. Finally, this notice approves revisions to the general conformity budget for McGuire Air Force Base and the 2002 ozone, $PM_{2.5}$, and CO base year emissions inventories, where applicable.

The Nine Not Classified Areas and Camden County were redesignated to attainment of the CO National Ambient Air Quality Standard (NAAQS) on February 5, 1996 and maintenance plans were also approved at that time. By this action, EPA is approving the New Jersey Department of Environmental Protection's (New Jersey) second maintenance plans for these areas because they provide for continued attainment of the CO NAAQS for an additional ten years. The intended effect of this rulemaking is to approve a SIP revision that will insure continued maintenance of the CO NAAQS.

EFFECTIVE DATE: This rule will be effective July 10, 2006.

ADDRESSES: EPA has established a docket for this action under Docket ID Number EPA–R02–OAR–2006–0342. All documents in the docket are listed in the *http://www.regulations.gov* Web site. Although listed in the electronic docket, some information is not publicly available, i.e., confidential business information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *http://www.regulations.gov* or in hard copy for public inspection during normal business hours at the Environmental Protection Agency, Region 2 Office, Air Programs Branch, 290 Broadway, 25th Floor, New York, New York 10007–1866. Copies of the State submittal are available at the New Jersey Department of Environmental Protection, Office of Energy, Bureau of Air Quality Planning, 401 East State Street, CN027, Trenton, New Jersey 08625.

FOR FURTHER INFORMATION CONTACT: Henry Feingersh *feingersh.henry@epa.gov* for general questions, Raymond Forde *forde.raymond@epa.gov* for emissions inventory questions, or Matthew Laurita *laurita.matthew@epa.gov* for mobile source related questions at the U.S. Environmental Protection Agency, Air Programs Branch, 290 Broadway, 25th Floor, New York, NY 10007–1866, telephone number (212) 637–4249, fax number (212) 637–3901.

SUPPLEMENTARY INFORMATION:

I. What Was Included in New Jersey's Submittal?

On February 21, 2006, New Jersey submitted a SIP revision to EPA which included a CO limited maintenance plan, revisions to the CO, NO_X, and VOC motor vehicle emissions budgets for northern New Jersey, $PM_{2.5}$ motor vehicle emissions budgets for northern New Jersey, revisions to the general conformity budget for McGuire Air Force Base, and the 2002 ozone, $PM_{2.5}$, and CO base year emissions inventories, where applicable. When they made the submittal, New Jersey had requested that EPA parallel process their SIP revision. New Jersey held a public hearing on March 31, 2006 on their proposed SIP revision and accepted written comments until April 7, 2006. New Jersey addressed all of the comments and made a subsequent adopted submittal on May 18, 2006.

II. What Were the Changes From the February 21, 2006 Submittal?

The May 18, 2006 submittal had minor changes from the original submittal as a result of comments received by New Jersey during the state rulemaking process. The May 18, 2006 submittal contained additional information and clarifications which acted to strengthen the original

submittal which EPA proposed to approve on May 9, 2006. EPA evaluated the changes and has decided that they are non-substantive changes. That is, the changes do not effect our earlier proposal to approve the SIP revision.

III. What Comments Did EPA Receive in Response to the May 9, 2006 EPA Proposal?

EPA proposed approval on the New Jersey SIP revision on May 9, 2006 (71 FR 26895). The comment period closed on June 8, 2006. EPA did not receive any comments.

IV. What Is the Adequacy Status of the CO Limited Maintenance Plan for Camden County and the Nine Not Classified Areas?

Section 118(e) of the transportation conformity rule (40 CFR 93) states that a conformity determination cannot be made using submitted motor vehicle emission budgets (''budgets'') until EPA makes a positive determination that the submitted budgets are adequate. In accordance with our rule, the limited maintenance plan for Camden County and the Nine Not Classified Areas was posted for adequacy review on April 18, 2006 on EPA's conformity Web site: *http://www.epa.gov/otaq/stateresources/transconf/adequacy.htm.*

As a general rule, however, limited maintenance plans, such as the maintenance plan for Camden County and the Nine Not Classified Areas, do not include budgets. Instead, for those areas that qualify under our limited maintenance plan policy for CO, we have concluded that the area will continue to maintain the CO NAAQS regardless of the quantity of emissions from the on-road transportation sector, and thus there is no need to cap emissions from the on-road transportation sector for the maintenance period.

Therefore, EPA's adequacy review of the limited maintenance plan for Camden County and the Nine Not Classified Areas primarily focuses on whether the area qualifies for the applicable limited maintenance plan policy for CO. From our review, EPA has concluded that Camden County and the Nine Not Classified Areas meet the criteria for a limited maintenance plan, and therefore, finds the maintenance plan for Camden County and the Nine Not Classified Areas adequate for conformity purposes under our limited maintenance plan policy.

V. What Is EPA's Conclusion?

EPA had proposed approval of New Jersey's request in 71 FR 26895. The reader is referred back to that proposal notice for additional detail on this action. Since EPA did not receive any comments and the New Jersey responses to the comments they had received clarify and strengthen the SIP revision, EPA is approving the New Jersey SIP request in this action. Tables 1 and 2 present summaries of the motor vehicle emissions budgets being approved in this notice. Table 3 presents the approved general conformity budgets for McGuire Air Force Base.

TABLE 1.—APPROVED NO_X, VOC, AND CO MOTOR VEHICLE EMISSIONS BUDGETS FOR THE NORTH JERSEY TRANSPORTATION PLANNING AUTHORITY

[Tons/day]

Year	NO_X [1]	VOC [1]	CO [2]
2005	327.83	146.33	.....
2007	256.58	122.53	1150
2014	.....	.....	899

[1] Covers Bergen, Essex, Hudson, Hunterdon, Middlesex, Monmouth, Morris, Ocean, Passaic, Somerset, Sussex, and Union Counties.
[2] Covers Bergen, Essex, Hudson, Passaic, and Union Counties.

TABLE 2.—APPROVED 2009 $PM_{2.5}$ MOTOR VEHICLE EMISSIONS BUDGETS

[Tons/year]

Metropolitan Planning Organization	Direct $PM_{2.5}$	NO_X
North Jersey Transportation Planning Authority [1]	1,207	61,676
Delaware Valley Regional Planning Commission [2]	89	4,328

[1] Covers Bergen, Essex, Hudson, Middlesex, Monmouth, Morris, Passaic, Somerset, and Union Counties.
[2] Covers Mercer County only.

TABLE 3.—APPROVED 2005 [1] MCGUIRE AIR FORCE BASE GENERAL CONFORMITY EMISSIONS BUDGETS

[Tons/year]

VOC	NO_X
730	1,534

[1] 2005 budgets updated such that the increase in NO_X is offset by a decrease in VOC, resulting in no expected net increase in ozone formation.

EPA is also determining that the CO maintenance plan for Camden County and the Nine Not Classified Areas is adequate for transportation conformity purposes under the limited maintenance plan policy for CO. This adequacy finding is effective July 10, 2006. EPA previously announced the adequacy of the $PM_{2.5}$ motor vehicle emissions budgets in the **Federal Register** (71 FR 33305).

Lastly, EPA is approving the 2002 ozone, $PM_{2.5}$, and CO base year emissions inventories, where applicable.

EPA has determined that today's rule falls under the ''good cause'' exemption in section 553(d)(3) of the Administrative Procedures Act (APA) which, upon finding ''good cause,'' allows an agency to make a rule effective immediately (thereby avoiding the 30-day delayed effective date otherwise provided for in the APA). Making today's rule effective upon publication benefits the public by allowing the most recently approved conformity budgets developed by the State to be used in determining conformity.

VI. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001). This action merely approves

state law as meeting federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have federalism implications because it does not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Act. This rule also is not subject to Executive Order 13045 ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by September 8, 2006. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Intergovernmental relations, Ozone, Particulate matter, Reporting and recordkeeping requirements, Volatile organic compounds, Nitrogen oxides, Sulfur dioxide.

Dated: June 27, 2006.

Alan J. Steinberg,

Regional Administrator, Region 2.

■ Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

■ 1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart FF—New Jersey

■ 2. Section 52.1581 is amended by revising paragraph (d) and adding paragraph (e) to read as follows:

§ 52.1581 Control strategy: Carbon monoxide.

* * * * *

(d) The 1997 and 2007 carbon monoxide motor vehicle emission budgets for Camden County and the Nine Not Classified Areas included in New Jersey's May 21, 2004 SIP revision are approved.

(e)(1) Approval—The May 18, 2006 revision to the carbon monoxide maintenance plan for Camden County and the Nine Not Classified Areas. This revision contains a second ten-year maintenance plan that demonstrates continued attainment of the National Ambient Air Quality Standard for carbon monoxide through the year 2017.

(2) The 2007 and 2014 carbon monoxide conformity emission budgets for five counties in the New York/Northern New Jersey/Long Island carbon monoxide maintenance area included in New Jersey's May 18, 2006 SIP revision are approved.

■ 3. Section 52.1582 is amended by revising paragraph (i)(2), removing and reserving paragraph (i)(3) and adding new paragraph (k) to read as follows:

§ 52.1582 Control Strategy and regulations: Ozone.

* * * * *

(i) * * *

(2) The 2005 conformity emission budgets for the New Jersey portion of the Philadelphia/Wilmington/Trenton nonattainment area included in New Jersey's April 8, 2003 State Implementation Plan revision are approved.

* * * * *

(k)(1) The Statewide 2002 base year ozone precursor emission inventories included in New Jersey's May 18, 2006 State Implementation Plan revision are approved.

(2) The revisions to the 2005 and 2007 motor vehicle emissions budgets for the New Jersey portion of the New York/Northern New Jersey/Long Island nonattainment area included in New Jersey's May 18, 2006 State Implementation Plan revision are approved.

(3) The conformity emission budgets for the McGuire Air Force Base included in New Jersey's May 18, 2006 State Implementation Plan revision are approved.

[FR Doc. E6–10743 Filed 7–7–06; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R04–OAR–2005–MS–0001–200612; FRL–8191–4]

Approval and Promulgation of Implementation Plans; Mississippi Prevention of Significant Deterioration and New Source Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is taking final action to approve revisions to the Mississippi State Implementation Plan (SIP) submitted on August 10, 2005, which include changes made to Mississippi regulations entitled, ''Permit Regulations for the Construction and/or Operation of Air Emissions Equipment'' and ''Regulations for the Prevention of Significant Deterioration of Air Quality.'' The revisions include changes to the State's permitting rules in order to address amendments to the federal New Source Review (NSR) regulations, which were promulgated by EPA on December 31, 2002 and reconsidered with minor changes on November 7, 2003 (collectively, these two final actions are called the ''2002 NSR reform rules''). The August 2005 submittal being approved today also includes changes made to the State's NSR program for minor stationary sources. Specifically, a new rule in Mississippi now allows construction to commence on certain minor sources prior to the applicant receiving a final permit to construct.

EFFECTIVE DATE: This rule will be effective August 9, 2006.

ADDRESSES: EPA has established a docket for this action under Docket Identification No. EPA–R04–OAR–2005–MS–0001. All documents in the docket are listed on the *www.regulations.gov* Web site. Although listed in the index, some information is not publicly available, i.e., Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *www.regulations.gov* or in hard copy at the Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. EPA requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding federal holidays.

FOR FURTHER INFORMATION CONTACT: For information regarding the Mississippi State Implementation Plan, contact Mr. Sean Lakeman, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency Region 4, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960. Telephone number: (404) 562–9043; e-mail address: *lakeman.sean@epa.gov.* For information regarding New Source Review, contact Ms. Kelly Fortin, Air Permits Section, at the same address above. Telephone number: (404) 562–9117; e-mail address: *fortin.kelly@epa.gov.*

SUPPLEMENTARY INFORMATION:

Table of Contents

I. What Action Is EPA Taking?

EPA is taking final action to approve revisions to the Mississippi SIP regarding Mississippi's NSR programs. On August 10, 2005, the State of Mississippi, through the Mississippi Department of Environmental Quality (MDEQ), submitted revisions to the Mississippi SIP. The SIP submittal consists of changes to the Mississippi Administrative Code (MAC) provisions for the ''Regulations for the Prevention, Abatement, and Control of Air Contaminants.'' Specifically, the SIP revisions include changes to MDEQ regulations entitled, ''Permit Regulations for the Construction and/or Operation of Air Emissions Equipment,'' Air Pollution Control Section 2 (APC–S–2), found at MAC 08–034–002, and ''Regulations for the Prevention of Significant Deterioration of Air Quality,'' Air Pollution Control Section 5 (APC–S–5), found at MAC 08–034–005. MDEQ submitted its revisions to APC–S–2 and APC–S–5 in response to EPA's December 31, 2002, changes to the federal NSR regulations. The State's major NSR rule revisions are an incorporation by reference of the federal rules, 40 CFR 52.21, as amended and promulgated by July 1, 2004, with appropriate changes made. The SIP revisions also include changes to Mississippi's NSR program for minor sources. The revised minor source program now allows construction to commence on certain minor sources prior to the applicant receiving a final permit to construct. EPA is now taking final action to approve Mississippi's August 2005 SIP revisions including changes to APC–S–2 and APC–S–5.

On March 23, 2006 (71 FR 14658), EPA published a notice of proposed rulemaking (NPR) in the **Federal Register**, proposing to approve the August 2005 SIP revisions. The March 23, 2006, NPR provides more detailed information about the proposed Mississippi SIP revisions being approved today. The public comment period for the proposed action ended on April 24, 2006. No comments, adverse or otherwise, were received on EPA's proposed action.

II. What Is the Background for This Action?

On December 31, 2002 (67 FR 80186), EPA published final changes to 40 Code of Federal Regulations (CFR) parts 51 and 52, regarding the Clean Air Act's (CAA's) Prevention of Significant Deterioration (PSD) and Nonattainment New Source Review (NNSR) programs. On November 7, 2003 (68 FR 63021), EPA published a notice of final action on its reconsideration of the 2002 rules. The purpose of today's action is to approve the August 2005 SIP submittal from the State of Mississippi, which includes EPA's 2002 NSR reform rules, and a change to Mississippi's minor source NSR program.

After the 2002 NSR reform rules were finalized and effective (March 3, 2003), various petitioners challenged numerous aspects of the 2002 NSR reform rules, along with portions of EPA's 1980 NSR rules (45 FR 52676, August 7, 1980). On June 24, 2005, the United States Court of Appeals for the District of Columbia Circuit (D.C. Circuit Court) issued a decision on the challenges to the 2002 NSR reform rules. *New York* v. *United States*, 413 F.3d 3 (D.C. Cir. 2005). In summary, the D.C. Circuit Court vacated portions of the rules pertaining to clean units and pollution control projects, remanded a portion of the rules regarding recordkeeping and relating to language in 40 CFR 52.21(r)(6) and 40 CFR 51.166(r)(6), ''Source obligation,'' and either upheld or did not comment on the other provisions included as part of the 2002 NSR reform rules.

Today's action is consistent with the decision of the D.C. Circuit Court because EPA is not proposing to approve any portions of the 2002 NSR reform rules that were vacated as part of the June 2005 decision. In addition,

Mississippi's rules regarding recordkeeping do not contain the language that was central to the Court's remand. In establishing its recordkeeping requirements, Mississippi incorporated the federal rule (40 CFR 52.21(r)(6)) by reference, but excluded the phrase, ''in circumstances where there is a reasonable possibility that a project that is not part of a major modification may result in a significant emission increase.'' APC–S–5, found at MAC 08–034–005(2.9). As a result, the Mississippi rule requires all sources that use the actual-to-projected-actual methodology to meet the recordkeeping requirements. EPA continues to move forward with its evaluation of the portion of its NSR reform rules that were remanded by the D.C. Circuit Court and is preparing to respond to the D.C. Circuit Court's remand. EPA's final decision with regard to the remand may require EPA to take further action on this portion of Mississippi's rules. At this time, however, Mississippi's recordkeeping provisions are at least as stringent as the federal requirements, and are therefore, approvable.

The 2002 NSR reform rules require that state agencies adopt and submit revisions to their part 51 permitting programs implementing the minimum program elements of the 2002 NSR reform rules no later than January 2, 2006. (Consistent with changes to 40 CFR 51.166(a)(6)(i), state agencies are now required to adopt and submit SIP revisions within three years after new amendments are published in the **Federal Register.**) State agencies may meet the requirements of 40 CFR part 51, and the 2002 NSR reform rules, with different but equivalent regulations. However, if a state decides not to implement any of the new applicability provisions, that state is required to demonstrate that its existing program is at least as stringent as the federal program.

On August 10, 2005, the State of Mississippi submitted SIP revisions for the purpose of revising the State's NSR permitting provisions for both major and minor stationary sources. The affected regulations are, ''Permit Regulations for the Construction and Operation of Air Emissions Equipment,'' APC–S–2, and ''Regulations for the Prevention of Significant Deterioration of Air Quality,'' APC–S–5. The revisions were made to update the Mississippi NSR programs to make them consistent with changes to the federal NSR regulations published December 31, 2002 (67 FR 80186) and November 7, 2003 (68 FR 63021). As noted earlier, Mississippi incorporated the federal rules (40 CFR 52.21, as amended and promulgated by July 1, 2004) by reference, with minor edits to reflect, for example, that MDEQ is the permitting authority, and not EPA. As a result of Mississippi's incorporation by reference of the federal rules, the resulting State rules are at least as stringent as the federal rules. This is the case even with regard to the provisions where Mississippi made changes, such as, APC–S–5 (MAC 08–034–005(2.9)), which corresponds to 40 CFR 51.21(r)(6), ''Source obligation,'' and is discussed above.

Mississippi's minor source permit regulations, which contain a new provision, are likewise consistent with federal rules regarding minor source programs. Mississippi's new provision, APC–S–2, Section XV.B., entitled, ''Optional Pre-Permit Construction,'' allows construction to commence on certain non-major sources and non-major modifications prior to receiving a final permit to construct, provided certain conditions are met. The revisions to this minor source rule are consistent with the requirements of section 110(a)(2)(C) of the CAA and federal regulations found at 40 CFR 51.160 through 51.164, including 40 CFR 51.160(b), which requires states to have legally enforceable procedures to prevent construction or modification of a source if it would violate any SIP control strategies or interfere with attainment or maintenance of the National Ambient Air Quality Standards.

The March 23, 2006, NPR and the Docket for this final action contain more detailed information regarding the Mississippi SIP revisions being approved today, and the rationale for EPA's final action. Additional background information on EPA's 2002 NSR reform rules can be found at 67 FR 80186 (December 31, 2002), and *http://www.epa.gov/nsr.* The public comment period for the final action being taken today ended on April 24, 2006. No comments, adverse or otherwise, were received on EPA's proposed action to approve Mississippi's August 2005 submittal.

III. Final Action

EPA is taking final action to approve revisions to the Mississippi SIP submitted by MDEQ on August 10, 2005. The submittal consists of revisions to the State ''Permit Regulations for the Construction and/or Operation of Air Emissions Equipment,'' APC–S–2, and ''Regulations for the Prevention of Significant Deterioration of Air Quality,'' APC–S–5.

IV. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this final action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001). This final action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this final rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4).

This final rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This final action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Therefore, it does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This final rule also is not subject to Executive Order 13045 ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of

the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This final rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by September 8, 2006. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: June 29, 2006.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

■ 40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

■ 1. The authority citation for part 52 continues to read as follows:

Authority: 42.U.S.C. 7401 *et seq.*

Subpart Z—Mississippi

■ 2. Section 52.1270(c) is amended by revising the Chapter title for ''APC–S–2'' and ''APC–S–5'' and the entries under Chapter ''APC–S–2'' and ''APC–S–5'' to read as follows:

§ 52.1270 Identification of plan.

* * * * *

(c) * * *

EPA—APPROVED MISSISSIPPI REGULATIONS

State citation	Title/subject	State effective date	EPA approval date	Explanation
*	*	*	*	*
APC–S–2 Regulations for the Construction and/or Operation of Air Emissions Equipment				
Section 1	General Requirements	08/27/05	07/10/2006 [Insert citation of publication]	
Section II	General Standards Applicable to All Permits	08/27/05	07/10/2006 [Insert citation of publication]	
Section III	Application for Permit to Construct and State Permit to Operate New Stationary Source.	08/27/05	07/10/2006 [Insert citation of publication]	
Section IV	Public Participation and Public Availability of Information.	08/27/05	07/10/2006 [Insert citation of publication]	
Section V	Application Review	08/27/05	07/10/2006 [Insert citation of publication]	
Section VI	Compliance Testing	08/27/05	07/10/2006 [Insert citation of publication]	
Section VII	Emissions Evaluation Report	08/27/05	07/10/2006 [Insert citation of publication]	
Section VIII	Procedures for Renewal of State Permit to Operate.	08/27/05	07/10/2006 [Insert citation of publication]	
Section IX	Reporting & Recordkeeping	08/27/05	07/10/2006 [Insert citation of publication]	
Section X	Emission Reduction Schedule	08/27/05	07/10/2006 [Insert citation of publication]	
Section XI	General Permits	08/27/05	07/10/2006 [Insert citation of publication]	
Section XII	Multi-Media Permits	08/27/05	07/10/2006 [Insert citation of publication]	
Section XIII	Exclusions	08/27/05	07/10/2006 [Insert citation of publication]	
Section XIV	CAFOs	08/27/05	07/10/2006 [Insert citation of publication]	
Section XV	Options	08/27/05	07/10/2006 [Insert citation of publication]	
Section XVI	Permit Transfer	08/27/05	07/10/2006 [Insert citation of publication]	

EPA—APPROVED MISSISSIPPI REGULATIONS—Continued

State citation	Title/subject	State effective date	EPA approval date	Explanation
Section XVII	Severability	08/27/05	07/10/2006 [Insert citation of publication]	
*	*	*	*	*
APC–S–5 Regulations for the Prevention of Significant Deterioration of Air Quality				
APC–S–5	Regulations for the Prevention of Significant Deterioration of Air Quality.	08/27/05	07/10/2006 [Insert citation of publication]	

* * * * *

[FR Doc. E6–10745 Filed 7–7–06; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 70

[EPA–R07–OAR–2006–0476; FRL–8192–5]

Approval and Promulgation of Implementation Plans and Operating Permits Program; State of Nebraska

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is approving revisions to the State Implementation Plan (SIP) and Operating Permits Programs submitted by the state of Nebraska. This action revises monitoring requirements which were found to be less stringent than the applicable Federal rule; adds permits-by-rule provisions, which would provide a streamlined approach for issuing construction/operating permits for hot mix asphalt plants and small animal incinerators; and deletes the chemical compound ethylene glycol monobutyl ether from the list of regulated hazardous air pollutants in Appendices II and III. Approval of these revisions will ensure consistency between the state and Federally-approved rules, and ensure Federal enforceability of the state's revised air program rules.

DATES: This direct final rule will be effective September 8, 2006, without further notice, unless EPA receives adverse comment by August 9, 2006. If adverse comment is received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** informing the public that the rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R07–OAR–2006–0476, by one of the following methods:

1. *http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
2. *E-mail: rios.shelly@epa.gov.*
3. *Mail:* Shelly Rios-LaLuz, Environmental Protection Agency, Air Planning and Development Branch, 901 North 5th Street, Kansas City, Kansas 66101.
4. *Hand Delivery or Courier:* Deliver your comments to Shelly Rios-LaLuz, Environmental Protection Agency, Air Planning and Development Branch, 901 North 5th Street, Kansas City, Kansas 66101.

Instructions: Direct your comments to Docket ID No. EPA–R07–OAR–2006–0476. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations. gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit through *http://www.regulations.gov* or e-mail information that you consider to be CBI or otherwise protected. The *http://www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov*, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the electronic docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, *i.e.*, CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the Environmental Protection Agency, Air Planning and Development Branch, 901 North 5th Street, Kansas City, Kansas 66101. The Regional Office's official hours of business are Monday through Friday, 8 a.m. to 4:30 p.m. excluding Federal holidays. The interested persons wanting to examine these documents should make an appointment with the office at least 24 hours in advance.

FOR FURTHER INFORMATION CONTACT: Shelly Rios-LaLuz at (913) 551–7296, or by e-mail at *rios.shelly@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document whenever ''we,'' ''us,'' or ''our'' is used, we mean EPA. This section provides additional information by addressing the following questions:

What Is a SIP?

Section 110 of the Clean Air Act (CAA or Act) requires states to develop air

pollution regulations and control strategies to ensure that state air quality meets the national ambient air quality standards established by EPA. These ambient standards are established under section 109 of the CAA, and they currently address six criteria pollutants. These pollutants are: carbon monoxide, nitrogen dioxide, ozone, lead, particulate matter, and sulfur dioxide.

Each state must submit these regulations and control strategies to us for approval and incorporation into the Federally-enforceable SIP.

Each Federally-approved SIP protects air quality primarily by addressing air pollution at its point of origin. These SIPs can be extensive, containing state regulations or other enforceable documents and supporting information such as emission inventories, monitoring networks, and modeling demonstrations.

What Is the Federal Approval Process for a SIP?

In order for state regulations to be incorporated into the Federally-enforceable SIP, states must formally adopt the regulations and control strategies consistent with State and Federal requirements. This process generally includes a public notice, public hearing, public comment period, and a formal adoption by a state-authorized rulemaking body.

Once a state rule, regulation, or control strategy is adopted, the state submits it to us for inclusion into the SIP. We must provide public notice and seek additional public comment regarding the proposed Federal action on the state submission. If adverse comments are received, they must be addressed prior to any final Federal action by us.

All state regulations and supporting information approved by EPA under section 110 of the CAA are incorporated into the Federally-approved SIP. Records of such SIP actions are maintained in the Code of Federal Regulations (CFR) at title 40, part 52, entitled ''Approval and Promulgation of Implementation Plans.'' The actual state regulations which are approved are not reproduced in their entirety in the CFR outright but are ''incorporated by reference,'' which means that we have approved a given state regulation with a specific effective date.

What Does Federal Approval of a State Regulation Mean to Me?

Enforcement of the state regulation before and after it is incorporated into the Federally-approved SIP is primarily a state responsibility. However, after the regulation is Federally approved, we are authorized to take enforcement action against violators. Citizens are also offered legal recourse to address violations as described in section 304 of the CAA.

What Is the Part 70 Operating Permits Program?

The CAA Amendments of 1990 require all states to develop operating permits programs that meet certain Federal criteria. In implementing this program, the states are to require certain sources of air pollution to obtain permits that contain all applicable requirements under the CAA. One purpose of the part 70 operating permits program is to improve enforcement by issuing each source a single permit that consolidates all of the applicable CAA requirements into a Federally-enforceable document. By consolidating all of the applicable requirements for a facility into one document, the source, the public, and the permitting authorities can more easily determine what CAA requirements apply and how compliance with those requirements is determined.

Sources required to obtain an operating permit under this program include ''major'' sources of air pollution and certain other sources specified in the CAA or in our implementing regulations. For example, all sources regulated under the acid rain program, regardless of size, must obtain permits. Examples of major sources include those that emit 100 tons per year or more of volatile organic compounds, carbon monoxide, lead, sulfur dioxide, nitrogen dioxide, or PM_{10}; those that emit 10 tons per year of any single hazardous air pollutant (HAP) (specifically listed under the CAA); or those that emit 25 tons per year or more of a combination of HAPs.

Revision to the State and local agencies operating permits program are also subject to public notice, comment, and our approval.

What Is the Federal Approval Process for an Operating Permits Program?

In order for state regulations to be included in the Federally-enforceable Title V operating permits program, states must formally adopt regulations consistent with state and Federal requirements. This process generally includes a public notice, public hearing, public comment period, and a formal adoption by a state-authorized rulemaking body.

Once a state rule, regulation, or control strategy is adopted, the state submits it to us for inclusion into the approved operating permits program. We must provide public notice and seek additional public comment regarding the proposed Federal action on the state submission. If adverse comments are received, they must be addressed prior to any final Federal action by us.

All state regulations and supporting information approved by EPA under section 502 of the CAA, including revisions to the state program, are included in the Federally-approved operating permits program. Records of such actions are maintained in the CFR at Title 40, part 70, appendix A, entitled ''Approval Status of State and Local Operating Permits Programs.''

What Is Being Addressed in This Document?

On October 20, 2005, we received a request from the State of Nebraska to approve revisions to Nebraska's State Implementation Plan and Part 70 Operating Permits Program. This request amends Nebraska's SIP to replace or update provisions currently found in Title 129, Chapter 34—Emission Sources; Testing; Monitoring; Appendix II—Hazardous Air Pollutants. This request also amends Nebraska's Part 70—Operating Permits Program to update Appendix III—Reporting Levels of Hazardous Air Pollutants for Emissions Inventory. Furthermore, this submittal requests the addition of Title 129, Chapter 42—Permits-By-Rule to the SIP. Proposed revisions to Nebraska's SIP were approved by the Nebraska Department of Environmental Quality (NDEQ) on September 5, 2002, December 5, 2002 and March 4, 2005. Revisions to Title 129 adopted on September 5, 2002, and December 5, 2002, were first submitted to EPA on June 4, 2004; however, approvability issues were identified, and we did not act on the request to add Chapter 42 to Nebraska's SIP at that time. Subsequently, we worked with NDEQ to resolve the approvability issues so that Nebraska could resubmit Chapter 42 for inclusion into the SIP.

This action also addresses revisions to Title 129—Nebraska Air Quality Regulations, Chapter 34, Appendix II and Appendix III. The purpose of these revisions is to revise monitoring requirements in Chapter 34 which were found to be less stringent than the Federal requirements, to delete the chemical compound ethylene glycol monobutyl ether from the list of regulated hazardous air pollutants in Appendices II and III.

The purpose of Chapter 42—Permits-by-Rule is to provide a streamlined approach for issuing construction/operating permits to certain minor source categories such as hot mix

asphalt plants and small animal incinerators.

What Is EPA's Analysis of These Revisions?

The revision to Chapter 34.005 makes the rule consistent with 40 CFR part 51 appendix P, paragraph 2.1.1.2. This provision establishes continuous monitoring requirements for certain sources. The Federal rule also exempts sources from monitoring requirements if they burn certain types of fuel and if a source has never been out of compliance with applicable particulate emission standards or visibility standards in a state rule. Prior to this revisions of section 005, the state rule allowed the exemption if the source has not been out of compliance with these standards in the preceding five years. This rule was not incorporated into the Nebraska SIP because it was less stringent than the Federal requirement. Because NDEQ has now revised its rule to be consistent with the Federal rule, EPA is approving it into the SIP.

Revisions to Title 129—Appendices II and III, which list hazardous air pollutants and reporting levels for emissions inventory purposes, were made in response to the delisting by EPA of the chemical compound ethylene glycol monobutyl ether from the regulated lists of Hazardous Air Pollutants.

The addition of Chapter 42 will offer Permits-by-Rule provisions which will provide a streamlined approach for issuing permits to various categories of sources. Nebraska's rule applies to minor sources in these source categories, including new, existing and temporary sources that have been approved by NDEQ for coverage under a permit-by-rule. Under these provisions, sources that are approved for a permit by rule are considered to have fulfilled the duty to obtain a construction and/or operating permit as required by Title 129, Chapter 17 and Chapter 5, respectively, unless required to do so by any other legal requirement. This is expected to significantly reduce NDEQ's resource burden by allowing sources in specified categories to operate under these provisions, as opposed to requiring them to apply for individual permits.

In addition, this will allow for resources to be spent in oversight of sources covered by the rule and in issuing individual permits to larger and more diverse sources not covered under these provisions.

The industry categories that are eligible to apply for a permit-by-rule include hot mix asphalt plants and small animal incinerators. A hot mix asphalt plant is defined in this rule as a facility that is comprised of generators; heaters; dryers; systems for screening, handling, storing and weighing hot aggregate; systems for loading, transferring and storing aggregate materials; system for mixing hot mix asphalt; and associated emission control systems. A small animal incinerator is defined as a facility that is used to burn deceased animal remains and is comprised of a dual-chamber design, consisting of a primary charging chamber and a secondary chamber (or after burner) with burners located in each burner.

NDEQ has ensured that provisions included in this rule are protective of human health and of the NAAQS by:

- Not allowing sources and/or emission units that are subject to the prevention of significant deterioration (PSD) program or that will be operated as a major source pursuant to the Class I operating permit program under Title 129, Chapter 5, to be eligible for a permit-by-rule.
- Not allowing provisions established in this rule to supersede any other applicable Federal requirements or a previously issued construction or operating permit (unless a technical demonstration is submitted which shows that the prior requirements are unnecessary to protect the NAAQS or PSD increment).
- Prohibiting a source that obtains a permit-by-rule to locate in or relocate to a nonattainment area.
- Including provisions which require that the owner or operator of any new, existing or temporary sources intended to be covered under a permit-by-rule notify NDEQ before construction begins (in the case of construction permits) or before operation begins (in the case of operating permits).
- Including provisions that require the source to submit the necessary information to conduct an air quality impact assessment as requested or as deemed appropriate by the Director of NDEQ.
- Establishing actions that will be taken against sources that have not complied with the permit-by-rule.
- Requiring that the source provide annual emissions inventory data or other necessary information to determine the impact of sources under a permit-by-rule to maintain the ambient air quality standards.
- Requiring notification to NDEQ and the local agencies, as applicable, of a change in location for temporary sources and determination of new hourly limits.
- Including record keeping requirements that would allow evaluation and enforcement of the limits and conditions contained in the rule.
- Establishing performance testing to evaluate compliance with provisions of the permit-by-rule.
- For hot mix asphalt plants, requiring the use of an air emissions computation program provided by NDEQ to establish hourly production limits and hourly generator combustion limits which will be used to conduct dispersion modeling to establish hourly limits that comply with the NAAQS.
- For hot mix asphalt plants, limiting the amount of diesel fuel that can be used on a monthly and a consecutive 12-month basis.
- For hot mix asphalt plants, requiring that the appropriate emissions control technology be installed.
- For small animal incinerators, establishing a restriction of the percent of medical/infectious waste that can be included per load to be incinerated.

In addition, NDEQ submitted a demonstration showing that, for each category covered by the rule, emission limits established in the rule are protective of the NAAQS accounting for the worst-case scenario for each source category.

Have the Requirements for Approval of a SIP and Part 70 Revision Been Met?

The state submittal has met the public notice requirements for SIP submissions in accordance with 40 CFR 51.102. The submittal also satisfied the completeness criteria of 40 CFR part 51, appendix V. In addition, as explained above and in more detail in the technical support document which is part of this document, the revision meets the substantive SIP requirements of the CAA, including section 110 and implementing regulations. The revision also meets the applicable requirements of Title V and EPA regulations for revision to the operating permit program.

What Action Is EPA Taking?

We are processing this action as a direct final action because the revisions make routine changes to the existing rules and other changes which are noncontroversial. Therefore, we do not anticipate any adverse comments. Please note that if EPA receives adverse comment on part of this rule and if that part can be severed from the remainder of the rule, EPA may adopt as final those parts of the rule that are not the subject of an adverse comment.

Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and

therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the CAA. This rule also is not subject to Executive Order 13045, ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing State submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the CAA. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by September 8, 2006. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects

40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

40 CFR Part 70

Administrative practice and procedure, Air pollution control, Intergovernmental relations, Operating permits, Reporting and recordkeeping requirements.

Dated: June 19, 2006.

William W. Rice,

Acting Regional Administrator, Region 7.

■ Chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

■ 1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart CC—Nebraska

■ 2. In § 52.1420 the table in paragraph (c) is amended by revising the entries for 129–34, 129–42, and Appendix II to read as follows:

§ 52.1420 Identification of plan.

* * * * *

(c) * * *

EPA-APPROVED NEBRASKA REGULATIONS

Nebraska citation	Title	State effective date	EPA approval date	Explanation
State of Nebraska Department of Environmental Quality Title 129—Nebraska Air Quality Regulations				
*	* *	*	* *	*
129–34	Emission Sources; Testing; Monitoring.	5/7/2005	7/10/2006 [*insert FR page number where the document begins*].	
*	* *	*	* *	*
129–42	Permits-By-Rule	11/20/2002, 4/8/2003, 5/7/2005.	7/10/2006 [*insert FR page number where the document begins*].	

EPA-APPROVED NEBRASKA REGULATIONS—Continued

Nebraska citation	Title	State effective date	EPA approval date	Explanation
*	* *	*	* *	*
Appendix II	Hazardous Air Pollutants (HAPs).	5/7/2005	7/10/2006 [*insert FR page number where the document begins*].	

* * * * *

PART 70—[AMENDED]

■ 1. The authority citation for part 70 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Appendix A—[Amended]

■ 2. Appendix A to Part 70 is amended by adding paragraph (i) under Nebraska; City of Omaha; Lincoln-Lancaster County Health Department to read as follows:

Appendix A to Part 70—Approval Status of State and Local Operating Permits Programs

* * * * *

Nebraska; City of Omaha; Lincoln-Lancaster County Health Department.

* * * * *

(i) The Nebraska Department of Environmental Quality approved a revision to NDEQ Title 129, Appendix III on May 2, 2005, which became effective May 7, 2005. This revision was submitted on October 20, 2005. We are approving this program revision effective September 8, 2006.

* * * * *

[FR Doc. E6–10730 Filed 7–7–06; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 64

[Docket No. FEMA–7933]

Suspension of Community Eligibility

AGENCY: Mitigation Division, Federal Emergency Management Agency (FEMA), Department of Homeland Security.

ACTION: Final rule.

SUMMARY: This rule identifies communities, where the sale of flood insurance has been authorized under the National Flood Insurance Program (NFIP), that are scheduled for suspension on the effective dates listed within this rule because of noncompliance with the floodplain management requirements of the program. If FEMA receives documentation that the community has adopted the required floodplain management measures prior to the effective suspension date given in this rule, the suspension will not occur and a notice of this will be provided by publication in the **Federal Register** on a subsequent date.

DATES: *Effective Dates:* The effective date of each community's scheduled suspension is the third date (''Susp.'') listed in the third column of the following tables.

ADDRESSES: If you want to determine whether a particular community was suspended on the suspension date, contact the appropriate FEMA Regional Office.

FOR FURTHER INFORMATION CONTACT: William H. Lesser, Mitigation Division, 500 C Street, SW., Washington, DC 20472, (202) 646–2807.

SUPPLEMENTARY INFORMATION: The NFIP enables property owners to purchase flood insurance which is generally not otherwise available. In return, communities agree to adopt and administer local floodplain management aimed at protecting lives and new construction from future flooding. Section 1315 of the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4022, prohibits flood insurance coverage as authorized under the NFIP, 42 U.S.C. 4001 *et seq.*; unless an appropriate public body adopts adequate floodplain management measures with effective enforcement measures. The communities listed in this document no longer meet that statutory requirement for compliance with program regulations, 44 CFR part 59 *et seq.* Accordingly, the communities will be suspended on the effective date in the third column. As of that date, flood insurance will no longer be available in the community. However, some of these communities may adopt and submit the required documentation of legally enforceable floodplain management measures after this rule is published but prior to the actual suspension date. These communities will not be suspended and will continue their eligibility for the sale of insurance. A notice withdrawing the suspension of the communities will be published in the **Federal Register**.

In addition, FEMA has identified the Special Flood Hazard Areas (SFHAs) in these communities by publishing a Flood Insurance Rate Map (FIRM). The date of the FIRM, if one has been published, is indicated in the fourth column of the table. No direct Federal financial assistance (except assistance pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act not in connection with a flood) may legally be provided for construction or acquisition of buildings in identified SFHAs for communities not participating in the NFIP and identified for more than a year, on FEMA's initial flood insurance map of the community as having flood-prone areas (section 202(a) of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4106(a), as amended). This prohibition against certain types of Federal assistance becomes effective for the communities listed on the date shown in the last column. The Administrator finds that notice and public comment under 5 U.S.C. 553(b) are impracticable and unnecessary because communities listed in this final rule have been adequately notified.

Each community receives 6-month, 90-day, and 30-day notification letters addressed to the Chief Executive Officer stating that the community will be suspended unless the required floodplain management measures are met prior to the effective suspension date. Since these notifications were made, this final rule may take effect within less than 30 days.

National Environmental Policy Act

This rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Considerations. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

The Administrator has determined that this rule is exempt from the requirements of the Regulatory Flexibility Act because the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4022, prohibits flood insurance coverage unless an appropriate public body adopts

adequate floodplain management measures with effective enforcement measures. The communities listed no longer comply with the statutory requirements, and after the effective date, flood insurance will no longer be available in the communities unless remedial action takes place.

Regulatory Classification

This final rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 13132, Federalism

This rule involves no policies that have federalism implications under Executive Order 13132.

Executive Order 12988, Civil Justice Reform

This rule meets the applicable standards of Executive Order 12988.

Paperwork Reduction Act

This rule does not involve any collection of information for purposes of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

List of Subjects in 44 CFR Part 64

Flood insurance, Floodplains.

■ Accordingly, 44 CFR part 64 is amended as follows:

PART 64—[AMENDED]

■ 1. The authority citation for part 64 is revised to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp.; p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp.; p. 376.

§ 64.6 [Amended]

The tables published under the authority of § 64.6 are amended as follows:

State and location	Community No.	Effective date authorization/cancellation of sale of flood insurance in community	Current effective map date	Date certain Federal assistance no longer available in SFHAs
Region IV				
Tennessee: Greenville, Town of, Greene County.	470069	June 12, 1975, Emerg; August 1, 1986, Reg; July 3, 2006, Susp.	July 3, 2006	July 3, 2006.
Region VI				
Louisiana:				
Arcadia, Town of, Bienville Parish	220029	June 12, 1975, Emerg; March 1, 1986, Reg; July 3, 2006, Susp.	.....do*	Do.
Ringgold, Town of, Bienville Parish	220030	March 30, 1976, Emerg; October 15, 1985, Reg; July 3, 2006, Susp.	.....do*	Do.

*-do-=Ditto.
Code for reading third column: Emerg.-Emergency; Reg.-Regular; Susp.-Suspension.

Dated: June 22, 2006.

David I. Maurstad,

Mitigation Division Director, Federal Emergency Management Agency, Department of Homeland Security.

[FR Doc. 06–6071 Filed 7–7–06; 8:45 am]

BILLING CODE 9110–12–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 1 and 54

[CC Docket No. 96–45, WC Docket No. 04–36; FCC 06–94]

Federal-State Joint Board on Universal Service; IP–Enabled Services

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Federal Communications Commission (Commission or FCC) adopts rules that make interim modifications to the existing approach for assessing contributions to the federal universal service fund (USF or Fund) in order to provide stability while the Commission continues to examine more fundamental reform. First, the Commission raises the interim wireless safe harbor from its current 28.5 percent level to 37.1 percent. Second, the Commission establishes universal service contribution obligations for providers of interconnected voice over Internet Protocol (VoIP) service. These rules are essential for securing the viability of universal service—a fundamental goal of communications policy as expressed in the Communications Act—in the near-term.

DATES: *Effective Date:* These rules contain information collection requirements that have not been approved by the Office of Management and Budget (OMB). The Commission will publish a document in the **Federal Register** announcing the effective date.

Comment Date: Written comments by the public on the new and/or modified information collection requirements are due September 8, 2006.

FOR FURTHER INFORMATION CONTACT: Amy Bender, Wireline Competition Bureau, (202) 418–1469, or via e-mail at *Amy.Bender@fcc.gov.*

For additional information concerning the Paperwork Reduction Act information collection requirements contained in this document, contact Judith B. Herman at (202) 418–0214, or via e-mail at *Judith-B.Herman@fcc.gov.*

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order (Order) in CC Docket No. 96–45 and WC Docket No. 04–36, FCC 06–94, adopted June 21, 2006, and released June 27, 2006. The complete text of this document is available for inspection and copying during normal business hours in the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. This document may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone (800) 378–3160 or (202) 863–2893, facsimile (202) 863–2898, or via e-mail at *www.bcpiweb.com.* It is also available on the Commission's Web site at *http://www.fcc.gov.*

In addition to filing comments with the Office of the Secretary, a copy of any comments on the Paperwork Reduction Act information collection requirements contained herein should be submitted to Judith B. Herman, Federal Communications Commission, Room 1–C804, 445 12th Street, SW., Washington,

DC 20554, or via the Internet to *Judith-B.Herman@fcc.gov.*

Compliance Dates: Providers of interconnected VoIP service must file FCC Form 499–Q quarterly, beginning with the August 1, 2006 filing. Interconnected VoIP providers must file Blocks 1, 2, and 6 of FCC Form 499–A prior to filing the FCC Form 499–Q on August 1, 2006. Interconnected VoIP providers must complete and file FCC Form 499–A beginning on April 1, 2007.

Synopsis of the Report and Order

1. *Background.* In 1996, Congress directed the Commission and the states to take the steps necessary to establish support mechanisms to ensure the delivery of affordable telecommunications services to all Americans in a changing competitive environment. Since then, the Commission has undertaken a number of reforms to fulfill the universal service goals established by Congress, and this Order takes additional steps to continue to satisfy these goals.

2. The interim revisions adopted in this Order respond to changes that have occurred in recent years in the telecommunications market, but retain the essential elements of the current approach to USF contributions. Specifically, while stand-alone interstate long distance revenues have been declining, wireless services and interconnected VoIP services, both of which typically include bundled long distance service, have been growing dramatically. As noted below, from December 2000 to December 2004, the number of wireless subscribers grew from approximately 101 million to approximately 181 million, and wireless providers' revenues grew from approximately $70 billion to approximately $122 billion. Similarly, the number of VoIP subscribers has grown from about 150 thousand at the end of 2003 to about 4.2 million at the end of 2005. The interim revisions made in this Order respond to these growing pressures on the stability and sustainability of the Fund.

3. Of particular relevance to this Order are three prior Commission actions. First, in 2002, the Commission sought additional comment on the ability of mobile wireless providers to report actual interstate end-user telecommunications revenue and whether the Commission should eliminate the interim safe harbor of 28.5 percent that it had established for mobile wireless providers. Second, as part of its efforts to ensure the long-term stability and sufficiency of the universal service support system in an increasingly competitive marketplace, the Commission began a proceeding to revisit the universal service contribution methodology in May 2001. In its Notice of Proposed Rulemaking, the Commission sought comment generally on whether and how to streamline and reform the contribution assessment methodology. Among other things, the Commission sought comment on whether to modify the existing revenue-based methodology, as well as whether to replace that methodology with one that assesses contributions on the basis of a flat-fee charge, such as a per-line charge. Finally, on March 10, 2004, the Commission initiated a proceeding to examine issues relating to Internet Protocol (IP)-enabled services—services and applications making use of the IP, including, but not limited to, VoIP services. In the *IP-Enabled Services Notice*, the Commission asked commenters to address, among other things, the universal service contribution obligations of both facilities-based and non-facilities-based providers of IP-enabled services.

4. *Discussion.* In this Order, we adopt interim revisions to the existing approach for assessing contributions for the federal USF that will preserve and advance universal service in the short term, while we continue to explore more fundamental reform. These interim revisions comport with the requirements of section 254 of the 1996 Act, and do so in a manner that responds to recent developments in the communications industry marketplace. *See* 47 U.S.C. 254. First, we raise the interim mobile wireless safe harbor from 28.5 percent to 37.1 percent. Second, we establish universal service contribution obligations for providers of interconnected VoIP service.

5. We conclude that immediate interim measures to revise the existing approach to USF contributions are necessary and in the public interest to preserve and advance universal service. There is widespread agreement that the Fund is currently under significant strain. The size of the Fund has grown significantly, with disbursements rising from approximately $4.4 billion in 2000 to approximately $6.5 billion in 2005, and projected to grow even further in the coming years. Moreover, changing market conditions, including the decline in long distance revenue and the growth of wireless and interconnected VoIP services, are eroding the assumptions that form the basis for the current revenue-based system.

6. When the revenue-based system was adopted in 1997, assessable interstate revenues were growing. The total assessable revenue base has recently declined, however, from about $79.0 billion in 2000 to about $74.7 billion in 2004, while Fund disbursements grew from approximately $4.4 billion in 2000 to approximately $5.7 billion in 2004, and continued to grow to approximately $6.5 billion in 2005. Declines in the contribution base combined with growth in the size of the Fund increasingly have placed upward pressure on the percentage of assessable revenues that must be contributed to the Fund (the ''contribution factor''). The contribution factor grew from 5.9 percent in the first quarter of 2000 to 8.9 percent in the fourth quarter of 2004, and is 10.9 percent for the second quarter of 2006. The pressure caused by a declining revenue base combined with growing disbursement needs jeopardizes the immediate sufficiency and stability of the support mechanisms, demonstrating the need for immediate, interim USF improvements, while we continue to pursue long-term fundamental reform of the contribution methodology.

7. In making our decision today, we considered the voluminous record in light of the current pressures on the Fund. We decline to adopt, at this time, more fundamental changes to the entire universal service program or to the contribution methodology. For example, one commenter has suggested that the entire universal service program is ''broken'' and advocated that a ''holistic, coordinated rational reform of all universal support mechanisms'' is necessary. It argued that reforming the contribution methodology in isolation, without addressing distribution issues, is ill-advised. Other parties advocate fundamentally reforming the contribution methodology by moving away from a revenue-based approach. The scale of reforming universal service is considerable, and we will continue to work towards stabilizing the Fund, as well as the entire universal service system. We note, however, that a consensus approach to reform has not developed. Thus, while we recognize that there may be merit to fundamental reform of the current USF contribution methodology, we find, at this time, that the discrete interim reforms we make to expand the contribution base will best promote the statutory requirements set forth in section 254 of the 1996 Act in the near-term, while providing the Commission with the opportunity to continue to address the challenges of fundamental reform.

8. *Wireless Provider Contributions.* To sustain the sufficiency of the Fund at this time, we raise the current interim safe harbor for mobile wireless providers from 28.5 percent to 37.1 percent, a level that better reflects that

industry's interstate revenues in light of the extraordinary growth of wireless services since 2002, the last time the Commission revisited this issue. We also require mobile wireless providers that use traffic studies (rather than use the safe harbor) to report interstate revenues to submit those traffic studies to USAC and to the Commission for review.

9. The revised interim safe harbor of 37.1 percent is the highest percentage of interstate and international usage by a wireless company supported in the record. Specifically, according to a traffic study conducted by TNS Telecoms for TracFone Wireless, the (then) seven large national mobile wireless service providers' interstate minutes of use ranged from 11.9 percent to 37.1 percent. Accordingly, consistent with the Commission's previous rationale for raising the interim wireless safe harbor to the highest level in the record, and based on the record now before us, we set the revised interim wireless safe harbor at 37.1 percent. Mobile wireless providers that choose to use the revised interim safe harbor must report 37.1 percent of their telecommunications revenues as interstate beginning with fourth quarter 2006 projected revenues that they will report on the August 1, 2006 FCC Form 499–Q.

10. We disagree with those parties that assert that the Commission should not rely on the TNS Telecoms traffic study because of concerns with sample size and methodology. Notably, no other wireless provider has proposed an alternative safe harbor level or submitted a traffic study that looks at various wireless providers to support a different, updated, interim safe harbor level. Indeed, none of the parties that criticize the TNS Telecoms study have submitted any data or statistical analysis that would show a specific upward bias in the TNS Telecoms study.

11. In light of apparent data discrepancies revealed in a preliminary review by Commission staff of FCC Form 499–A filings and other reports filed by wireless telephony providers, we take an additional step to ensure the accuracy of reported revenue data. Currently, a mobile wireless provider that reports actual revenue data must provide, upon request, documentation to support the reporting of actual interstate telecommunications revenues. We note that a mobile wireless provider may use a traffic study as a proxy for calculating its total amount of actual interstate revenues. We are concerned that the use of traffic studies may be, in part, a cause of these data reporting problems. For example, mobile wireless providers have incentives to bias any traffic studies to minimize their amount of interstate and international end-user revenues and thereby minimize their Fund contributions; there are no countervailing market forces to offset these incentives. Consequently, we now require any mobile wireless provider that uses a traffic study to determine its interstate end-user revenues for universal service contribution purposes to submit the study to the Commission and to USAC for review. Any mobile wireless provider using a traffic study shall submit the traffic study no later than the deadline for submitting the FCC Form 499–Q for the same time period. We also remind wireless carriers that, while they are permitted to continue to report revenues at either the legal entity level or on a consolidated basis, they are required to decide whether to report either actual or safe harbor revenues for all of their affiliated legal entities within the same safe harbor category.

12. Accordingly, we take this opportunity to caution universal service contributors (and other entities reporting data to the Commission) that we will not hesitate to use our enforcement authority to investigate and remedy these and other discrepancies in data reported to the Commission. Moreover, we expect filers that have made reporting errors to re-file the relevant FCC forms or reports as soon as possible (regardless of whether the forms are due to the Commission, USAC, or another entity). To the extent that filers determine that they should have made additional contributions to the Fund, we further expect those entities to work with USAC to resolve their contribution obligations.

13. *Interconnected VoIP Services.* We require providers of ''interconnected VoIP services,'' as defined by the Commission, to contribute to the federal USF under the existing contribution methodology on an interim basis. As described above, the number of VoIP subscribers in the United States has grown significantly in recent years, and we expect that trend to continue. At the same time, the USF contribution base has been shrinking, and the contribution factor has risen considerably as a result. We therefore find that extending USF contribution obligations to providers of interconnected VoIP services is necessary at this time in order to respond to these growing pressures on the stability and sustainability of the Fund.

14. The Commission has not yet classified interconnected VoIP services as ''telecommunications services'' or ''information services'' under the definitions of the Act. Again here, we do not classify these services. To the extent interconnected VoIP services are telecommunications services, they are of course subject to the mandatory contribution requirement of section 254(d). Absent our final decision classifying interconnected VoIP services, we analyze the issues addressed in this Order under our permissive authority pursuant to section 254(d) and our Title I ancillary jurisdiction. Specifically, we find that interconnected VoIP providers are ''providers of interstate telecommunications'' under section 254(d), and we assert the Commission's permissive authority to require interconnected VoIP providers ''to contribute to the preservation and advancement of universal service'' because ''the public interest so requires.'' We also exercise our ancillary jurisdiction to extend contribution obligations to interconnected VoIP providers. We note that both Vonage and the VON Coalition have stated on the record in this proceeding their belief that interconnected VoIP providers should be required to contribute to the Fund, apparently conceding that the Commission has the authority to impose such a requirement. Finally, we address implementation issues related to our requirement that interconnected VoIP providers contribute to the USF.

15. *Scope.* We extend universal service obligations to providers of interconnected VoIP services, as previously defined by the Commission. The Commission has defined ''interconnected VoIP services'' as those VoIP services that: (1) Enable real-time, two-way voice communications; (2) require a broadband connection from the user's location; (3) require IP-compatible customer premises equipment; and (4) permit users to receive calls from and terminate calls to the PSTN. We emphasize that interconnected VoIP service offers the capability for users to receive calls from and terminate calls to the PSTN; the obligations we establish apply to all VoIP communications made using an interconnected VoIP service, even those that do not involve the PSTN. Furthermore, these obligations apply regardless of how the interconnected VoIP provider facilitates access to and from the PSTN, whether directly or by making arrangements with a third party. Finally, we recognize that the definition of interconnected VoIP services may need to expand as new VoIP services increasingly substitute for traditional phone service.

16. We believe that it is appropriate to require USF contributions from

interconnected VoIP providers because this approach is consistent with important principles that the Commission has established in its implementation of section 254 of the Act. Specifically, the Commission has previously found it appropriate to extend universal service contribution obligations to classes of providers that benefit from universal service through their interconnection with the PSTN. In addition, in the *Universal Service First Report and Order*, the Commission established competitive neutrality as a principle to guide the development of universal service policies. As discussed in more detail below, we find that these two principles support our conclusion that extending universal service contribution obligations to this particular category of providers is in the public interest.

17. *Permissive Authority Under Section 254(d).* Section 254(d) states that the Commission may require ''[a]ny other provider of interstate telecommunications'' to contribute to universal service, ''if the public interest so requires.'' Pursuant to the Act's definitions, a ''provider of interstate telecommunications'' provides ''the transmission, between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information as sent and received.'' Unlike providers of interstate telecommunications services, however, providers of interstate telecommunications do not necessarily ''offer'' telecommunications ''for a fee directly to the public.'' The Commission has previously used this permissive authority to require private carriers and payphone aggregators to contribute to the Fund. In the *IP-Enabled Services Notice*, the Commission sought comment on, among other things, its authority, including mandatory and permissive authority under section 254(d), to require universal service contributions by IP-enabled service providers.

18. *Providers of Interstate Telecommunications.* We find that interconnected VoIP providers are ''providers of interstate telecommunications'' as required for the use of the permissive authority pursuant section 254(d). Specifically, using the Act's definitions, we find that interconnected VoIP providers ''provide'' ''the transmission, between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information as sent and received.''

19. First, we must consider whether interconnected VoIP providers ''provide'' telecommunications. Congress did not define the term ''provide'' or ''provider,'' but the structure of the Act informs us that ''provide'' is a different and more inclusive term than ''offer.'' It is settled law that the determination of what is ''offered,'' under the Act's definitions, ''turns on the nature of the functions the end user is offered.'' Had Congress intended us to look at the same factors in analyzing our permissive authority under section 254(d), it would have referred to ''other offerors of telecommunications.'' Because Congress used a different term—''providers''—we understand Congress to have meant something broader. Common definitions of the term ''provide'' suggest that we should consider the meaning of ''provide'' from a supply side, i.e., from the provider's point of view. For example, Black's Law Dictionary defines ''provide'' to mean ''[t]o make, procure, or furnish for future use, prepare. To supply; to afford; to contribute.'' Transmission is an input into the finished service ''offered'' to the customer. But from the interconnected VoIP provider's point of view, we believe that the provider ''provides'' more than just a finished service. We believe that it is reasonable to conclude that a provider ''furnishes'' or ''supplies'' components of a service, in this case, transmission.

20. Second, we determine that interconnected VoIP providers provide ''telecommunications.'' As the Commission has recognized, ''the heart of 'telecommunications' is transmission.'' The Commission has previously concluded that interconnected VoIP services involve ''transmission of [voice] by aid of wire, cable, or other like connection'' and/or ''transmission by radio'' of voice. Indeed, by definition, interconnected VoIP services are those ''permitting users to receive calls from and terminate calls to the PSTN.'' To provide this capability, interconnected VoIP providers may rely on their own facilities or provide access to the PSTN through others. ''Over the top'' interconnected VoIP providers generally purchase access to the PSTN from a telecommunications carrier who accepts outgoing traffic from and delivers incoming traffic to the interconnected VoIP provider's media gateway. The telecommunications carrier supplies transmission to or from the PSTN user, or transmits the communication to another carrier that can transmit the communication to the PSTN user. Facilities-based interconnected VoIP providers similarly enter into arrangements with telecommunications carriers to complete communications to and from the PSTN. The telecommunications carriers involved in originating or terminating a communication via the PSTN are by definition offering ''telecommunications.'' Just as the Commission has previously found resellers to be supplying telecommunications to their customers even though they do not own or operate the transmission facilities, we find interconnected VoIP providers to be ''providing'' telecommunications regardless of whether they own or operate their own transmission facilities or they obtain transmission from third parties. In contrast to services that merely use the PSTN to supply a finished product to end users, interconnected VoIP supplies PSTN transmission itself to end users.

21. Finally, the Commission previously determined that Vonage's interconnected VoIP service is a jurisdictionally mixed service in which part of the service is interstate in nature. We believe that other interconnected VoIP services similarly are jurisdictionally mixed and thus are subject to USF contributions on interstate and international revenues. For these reasons, we conclude that interconnected VoIP providers are ''providers of interstate telecommunications'' under section 254(d).

22. *Public Interest.* Next, we must consider whether requiring interconnected VoIP providers to contribute to the USF is in the public interest. We conclude that it is. The Commission has previously found it in the public interest to extend universal service contribution obligations to classes of providers that benefit from universal service through their interconnection with the PSTN. We believe that providers of interconnected VoIP services similarly benefit from universal service because much of the appeal of their services to consumers derives from the ability to place calls to and receive calls from the PSTN, which is supported by universal service mechanisms. As the Fifth Circuit explained, ''Congress designed the universal service scheme to exact payments from those companies benefiting from the provision of universal service.'' Like other contributors to the Fund, interconnected VoIP providers are ''dependent on the widespread telecommunications network for the maintenance and expansion of their business,'' and they ''directly benefit[] from a larger and larger network.'' It is therefore

consistent with Commission precedent to impose obligations that correspond with the benefits of universal service that these providers already enjoy.

23. We also find that the principle of competitive neutrality supports our conclusion that we should require interconnected VoIP providers to contribute to the support mechanisms. Competitive neutrality means that ''universal service support mechanisms and rules neither unfairly advantage nor disadvantage one provider over another, and neither unfairly favor nor disfavor one technology over another.'' As the Commission has noted, interconnected VoIP service ''is increasingly used to replace analog voice service.'' As the interconnected VoIP service industry continues to grow, and to attract subscribers who previously relied on traditional telephone service, it becomes increasingly inappropriate to exclude interconnected VoIP service providers from universal service contribution obligations. Moreover, we do not want contribution obligations to shape decisions regarding the technology that interconnected VoIP providers use to offer voice services to customers or to create opportunities for regulatory arbitrage. The approach we adopt today reduces the possibility that carriers with universal service obligations will compete directly with providers without such obligations. We therefore find that the principle of competitive neutrality is served by extending universal service obligations to interconnected VoIP service providers.

24. Thus, based on the record before us, we find that interconnected VoIP providers, like telecommunications carriers, have built their businesses, or a part of their businesses, on access to the PSTN. For these reasons, we find that the public interest requires interconnected VoIP providers, as providers of interstate telecommunications, to contribute to the preservation and advancement of universal service in the same manner as carriers that provide interstate telecommunications services. Finally, we note that the inclusion of such providers as contributors to the support mechanisms will broaden the funding base, lessening contribution requirements on telecommunications carriers or any particular class of telecommunications providers.

25. *Ancillary Jurisdiction.* In addition to permissive authority under section 254(d), we exercise our ancillary jurisdiction under Title I of the Act to extend universal service contribution obligations to interconnected VoIP providers. We conclude that regardless of the statutory classification of these services, the Commission has ancillary jurisdiction to promote universal service by adopting universal service contribution rules for interconnected VoIP services, and commenters largely agree. Ancillary jurisdiction may be employed, in the Commission's discretion, when Title I of the Act gives the Commission subject matter jurisdiction over the service to be regulated and the assertion of jurisdiction is ''reasonably ancillary to the effective performance of [its] various responsibilities.'' Both predicates for ancillary jurisdiction are satisfied here.

26. First, as we concluded in the *VoIP 911 Order*, interconnected VoIP services fall within the subject matter jurisdiction granted to us in the Act. Second, our analysis requires us to evaluate whether imposing universal service contribution obligations is reasonably ancillary to the effective performance of the Commission's various responsibilities. Based on the record in this matter, we find that section 254 and section 1 of the Act provide the requisite nexus.

27. Section 254 requires the Commission to establish ''specific, predictable, and sufficient mechanisms * * * to preserve and advance universal service.'' The Act requires telecommunications carriers to contribute to those mechanisms on a mandatory basis, and as discussed above, section 254(d) grants the Commission permissive authority to require other ''providers of interstate telecommunications'' to contribute. As discussed above, we recognize that interconnected VoIP service ''is increasingly used to replace analog voice service.'' We expect that trend to continue. If we do not require interconnected VoIP providers to contribute, the revenue base that supports the Fund will continue to shrink, while these providers continue to benefit from their interconnection to the PSTN. We believe that this trend threatens the stability of the Fund and our action to extend contributions obligations to interconnected VoIP providers is ''reasonably ancillary to the effective performance of [our] responsibilities'' under section 254. Thus, we determine, as required, that the approach we adopt today ''will 'further the achievement of long-established regulatory goals' '' to preserve and advance universal service through specific, predictable, and sufficient contribution mechanisms.

28. In addition, section 1 of the Act charges the Commission with responsibility to ''make available, so far as possible, to all the people of the United States, * * * a rapid, efficient, Nation-wide, * * * wire and radio communication service with adequate facilities at reasonable charges.'' In light of this statutory mandate, promoting universal service became one of the Commission's primary responsibilities under the Act even before Congress adopted section 254 in 1996. Before the 1996 Act, the Commission relied exclusively on its Title I ancillary jurisdiction to adopt regulations establishing a fund to further this statutory goal. In *Rural Telephone Coalition* v. *FCC*, the United States Court of Appeals for the District of Columbia Circuit upheld the Commission's assertion of ancillary jurisdiction to establish a funding mechanism to support universal service in the absence of specific statutory authority as ancillary to its responsibilities under section 1 of the Act to ''further the objective of making communications service available to all Americans at reasonable charges.'' We conclude that as more consumers begin to rely on interconnected VoIP services for their communications needs, the action we take here ensures that the Commission continues to ''further the achievement of long-established regulatory goals'' to ''make available * * * communication service with adequate facilities at reasonable charges.'' Thus, pursuant to our ancillary jurisdiction, we extend USF contribution obligations to providers of interconnected VoIP services.

29. *Implementation.* In this section, we address implementation issues related to our requirement that interconnected VoIP providers contribute to the USF. Because we are expanding the base of contributors, certain entities that in the past have not been required to report interstate and international revenues will now be required to do so. For that reason, we provide a brief overview of our reporting requirements. This Order does not fully explain all of the Commission's requirements. Interconnected VoIP providers that are new to the USF procedures should familiarize themselves with the Commission's USF rules and with FCC Forms 499–A and 499–Q Telecommunications Reporting Worksheets and the accompanying instructions.

30. *Identifying Revenues for Reporting Purposes.* Most interconnected VoIP providers offer packages of services to consumers for a single price that include telecommunications, as discussed above, along with CPE and/or features that may be information services. To the extent that an interconnected VoIP provider has

chosen to structure its offerings in this manner, it may use the safe harbors established in the *CPE Bundling Order* to determine the appropriate amount of telecommunications revenues to be reported (as distinguished from revenue derived from non-telecommunications). Interconnected VoIP service providers are not obligated to use either of the safe harbors in the *CPE Bundling Order*, but we emphasize that other allocation methods may not be considered reasonable and will be evaluated on a case-by-case basis in an audit context.

31. Interconnected VoIP providers must report and contribute to the USF on all their interstate and international end-user telecommunications revenues. To fulfill this obligation, interconnected VoIP providers have three options: (1) They may use the interim safe harbor established in this Order; (2) they may report based on their actual interstate telecommunications revenues; or (3) they may rely on traffic studies, subject to the conditions described below.

32. As we recognized in the *Vonage Order*, it is difficult for some interconnected VoIP providers to separate their traffic on a jurisdictional basis. Indeed, many of these VoIP providers have advocated to us in other proceedings that their services are ''inherently interstate.'' Consistent with this advocacy and based on the conclusions in the *Vonage Order*, we find that it would be reasonable for us to treat the interconnected VoIP traffic as 100 percent interstate for USF purposes. Indeed, in another context where providers were unable to separate their interstate telecommunications revenues from other revenues, the Commission found a safe harbor of 100 percent to be reasonable. Nevertheless, we establish a safe harbor that is lower than 100 percent as a convenient alternative for interconnected VoIP providers. Our safe harbor is necessarily the product of line drawing. In adopting a safe harbor we consider what would be an appropriate analogue. One industry report has estimated that 83.8 percent of VoIP traffic in 2004 was either long distance or international and only 16.2 percent was local. Thus, it appears that VoIP traffic is predominantly long distance or international. As such, it is much like wireline toll service which similarly offers interstate, intrastate toll, and international services. In fact as described below, VoIP services are often marketed as a substitute for wireline toll service. The percentage of interstate revenues reported to the Commission by wireline toll providers is 64.9 percent. We therefore find that establishing a safe harbor of 64.9 percent is reasonable for purposes of this interim action.

33. Moreover, we believe that setting the safe harbor at 64.9 percent is reasonable pending the completion of the accompanying NPRM where we seek comment on whether to change or eliminate all of the safe harbors. To set the safe harbor lower would permit providers that actually provide more interstate service to escape universal service contribution obligations for some of their interstate traffic, thus undermining our actions to preserve and advance the goals of universal service. Furthermore, to the extent the safe harbor percentage is higher than some providers' actual interstate use, providers may instead contribute to the fund based on actual revenue allocations or by conducting a traffic study, as described below. We encourage interconnected VoIP providers to explore these more precise avenues for determining the jurisdictional nature of their revenues.

34. We do not believe that the percentage used as the wireless safe harbor would serve as a reasonable safe harbor for interconnected VoIP. Indeed, the record reflects that interconnected VoIP service is often marketed as an economical way to make interstate and international calls, as a lower-cost substitute for wireline toll service. For purposes of a safe harbor, it is reasonable to account for the many customers who purchase these services to place a high volume of interstate and international calls, and benefit from the pricing plans the providers offer for such services. We believe that these characteristics differentiate it from wireless service. Accordingly, we find that the interconnected VoIP safe harbor should be substantially higher than the wireless safe harbor in order to properly capture interstate revenues.

35. While, as stated above, interconnected VoIP providers may report their actual interstate telecommunications revenues, we recognize that some interconnected VoIP providers do not currently have the ability to identify whether customer calls are interstate and therefore subject to the section 254(d) contribution requirement. Indeed, a fundamental premise of our decision to preempt Minnesota's regulations in the *Vonage Order* was that it was impossible to determine whether calls by Vonage's customers stay within or cross state boundaries. Therefore, an interconnected VoIP provider may rely on traffic studies or the safe harbor described above in calculating its federal universal service contributions. Alternatively, to the extent that an interconnected VoIP provider develops the capability to track the jurisdictional confines of customer calls, it may calculate its universal service contributions based on its actual percentage of interstate calls. Under this alternative, however, we note that an interconnected VoIP provider with the capability to track the jurisdictional confines of customer calls would no longer qualify for the preemptive effects of our *Vonage Order* and would be subject to state regulation. This is because the central rationale justifying preemption set forth in the *Vonage Order* would no longer be applicable to such an interconnected VoIP provider.

36. In lieu of using the interim safe harbor or reporting actual interstate telecommunications revenues, interconnected VoIP providers may rely on traffic studies, as noted above, and as wireless carriers may do. The record indicates that traffic studies are a feasible option for providers of interconnected VoIP service. However, before it can begin to base its USF contributions on a traffic study, an interconnected VoIP provider must submit its proposed traffic study to the Commission for approval. While prior Commission approval of traffic studies is not required for wireless carriers, we have nonetheless identified concerns in the wireless context with the use of traffic studies as a replacement for reporting actual revenues, and we now require wireless carriers to submit their traffic studies to the Commission and to USAC. If we were to allow interconnected VoIP providers to rely on unapproved traffic studies, we would risk extending the problems we have identified with the use of traffic studies by wireless carriers to a new technology, possibly creating unforeseen problems. For these reasons, we find it appropriate to require prior Commission approval of any traffic study on which an interconnected VoIP provider proposes to rely. Until the Commission has approved an interconnected VoIP provider's proposed traffic study, that provider may use the interim safe harbor. We may extend this treatment to wireless traffic studies in the future, but we decline to do so today. While there would be a benefit to parity of requirements between wireless and interconnected VoIP providers, a pre-approval requirement for wireless traffic studies would be disruptive to wireless contributors who, unlike interconnected VoIP providers, are already relying on the current regime.

37. We take one additional interim action here to ensure the health of the USF pending broader reform. As we stated earlier, we have not yet classified

interconnected VoIP as either a telecommunications service or an information service. Because we have not yet made that classification, some interconnected VoIP providers may hold themselves out as telecommunications carriers, but others do not, considering themselves instead to be ''end users.'' Carriers that provide telecommunications service inputs to the latter group of interconnected VoIP providers therefore have been reporting the resulting revenues as end-user revenues and including them in their bases. Because we do not classify interconnected VoIP today, nor do we attempt to quantify the magnitude of USF contributions from carriers that supply wholesale inputs to interconnected VoIP providers, carriers supplying telecommunications services to interconnected VoIP providers who are not themselves carriers should continue to include the revenues derived therefrom in their own contribution bases for two full quarters after the effective date of this Order. Wholesale carriers may not exclude these revenues by invoking the ''carrier's carrier'' rule during this interim period. To the extent required, we waive here Commission rule 54.706(b) for the duration of this requirement.

38. We recognize that, by requiring on an interim basis that both the underlying carrier and the interconnected VoIP provider contribute based (in part) on the revenues derived from providing the underlying transmission, the Fund may receive contributions from telecommunications revenues associated with the same facilities two times. We emphasize that this is a temporary measure, and we do not take this step lightly. We are concerned, however, that if carriers are permitted to invoke the carrier's carrier rule immediately to exclude revenues from interconnected VoIP providers, the result could be a net decrease in the Fund in the short term. Such a result would be inconsistent with our obligation to ensure a sufficient and sustainable Fund and to preserve and advance universal service. By continuing to require contributions from carriers supplying transmission facilities to interconnected VoIP providers for an additional two quarters, we eliminate any risk of decreasing the Fund while we implement contribution obligations for interconnected VoIP providers. Further, we find nothing in section 254 of the 1996 Act that prohibits this interim approach.

39. *Reporting Requirements.* Providers of interconnected VoIP services will follow the same basic USF reporting procedures as other providers of interstate and international telecommunications, using the same forms and filing instructions. Contributors to USF report historical gross-billed, projected gross-billed, and projected collected end-user interstate and international revenues quarterly on FCC Form 499–Q. Interconnected VoIP service providers will be required to file FCC Form 499–Q beginning on August 1, 2006. Contributors report gross-billed and actual collected end-user interstate and international revenues on FCC Form 499–A on April 1 of each year. Interconnected VoIP service providers will be required to file a completed FCC Form 499–A beginning on April 1, 2007. Interconnected VoIP providers who will be submitting the FCC Form 499–Q for the first time because of this Order are not required to complete lines 115–118 on the Form until they submit the Form for the February 1, 2007 deadline. All other portions of the Form must be completed beginning with the submissions due August 1, 2006.

40. Under Commission rules, a provider of interstate and international telecommunications whose annual universal service contribution is expected to be less than $10,000 is not required to contribute to the USF, or to file a Telecommunications Reporting Worksheet unless it is required to contribute to other support and cost recovery mechanisms. Interconnected VoIP providers that satisfy this *de minimis* exemption need not contribute to the Fund. We find, however, that it is appropriate to require all providers of interconnected VoIP services—including those that satisfy the *de minimis* exemption—to register with the Commission in order to facilitate our enforcement of the obligations the Commission has imposed in this Order on providers of interconnected VoIP services. In order to fulfill this reporting requirement, every interconnected VoIP provider that has not already registered with the Commission (and designated an agent for service of process) must complete and file an FCC Form 499–A with blocks 1, 2, and 6 completed. Providers should refer to the instructions on the revised FCC Form 499–A for additional details on how to complete this registration requirement. Interconnected VoIP providers will receive an FCC Registration Number (FRN) when they register with the Commission. Because providers must have an FRN in order to submit required USF filings, it is the responsibility of the interconnected VoIP provider to register with the Commission and obtain an FRN prior to the August 1, 2006 deadline for filing FCC Form 499–Q.

41. Finally, interconnected VoIP providers must comply with the Commission's rules with respect to recovering USF contributions from their customers. Contributors may choose to recover part or all of their universal service contributions from their customers, but they are prohibited from marking up universal service line-item amounts above the relevant contribution factor.

42. *Technical Matters.* On our own motion, we amend section 54.5 of our rules to correct a typographical error. Section 54.5 currently defines ''contributor'' as ''an entity required to contribute to the universal service support mechanisms pursuant to § 54.703.'' Section 54.706 addresses which entities are required to contribute to the universal service support mechanisms, not section 54.703. Accordingly, we amend section 54.5 to define ''contributor'' as ''an entity required to contribute to the universal service support mechanisms pursuant to § 54.706.'' Further, in the sections of our rules that we revise to conform to this Order, we also remove references to our contribution methodology prior to April 1, 2003 which are now outdated. Because these rule changes are non-substantive, the notice and comment and effective date provisions of the Administrative Procedure Act are inapplicable.

Final Paperwork Reduction Act Analysis

43. This document contains new information collection requirements. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public to comment on the information collection requirements contained in this Report and Order as required by the Paperwork Reduction Act of 1995, Public Law 104–13. Public and agency comments are due September 8, 2006.

Final Regulatory Flexibility Analysis

44. As required by the Regulatory Flexibility Act of 1980, as amended (RFA), an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the FNPRM in CC Docket No. 96–45 and into the NPRM in WC Docket No. 04–36. The Commission sought written public comment on the proposals in the NPRMs, including comment on the IRFAs. This present Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA. To the extent that any statement in this FRFA is perceived as creating ambiguity with respect to our rules or statements made in preceding

sections of this Order, the rules and statements set forth in those preceding sections shall be controlling.

1. Need for, and Objectives of, the Rules

45. In the Report and Order (Order), the Commission makes interim modifications to the existing approach for assessing contributions to the federal universal service fund (USF or Fund) in order to maintain the stability and sufficiency of the Fund in the near-term in response to marketplace changes while we continue to examine more fundamental reform. Under the revised approach, the Commission raises the interim wireless safe harbor from its current 28.5 percent level to 37.1 percent. The Commission also establishes universal service contribution obligations for providers of interconnected voice over Internet Protocol (VoIP) service. As detailed in the Order, interconnected VoIP providers must report and contribute to the USF on all their interstate and international end-user telecommunications revenues. To fulfill this obligation, interconnected VoIP providers have three options: (1) They may use the interim safe harbor of 64.9 percent established in this Order; (2) they may report based on their actual interstate telecommunications revenues; or (3) they may rely on traffic studies. The interim changes made in the Order are essential for securing the viability of universal service—a fundamental goal of communications policy as expressed in the Communications Act—in the near-term.

46. The interim modifications adopted in the Order respond to marketplace developments and minimize the impact of changes to the current system on consumers, service providers, and universal service administration, while we continue to work towards more fundamental reform. Specifically, the revised approach to USF contributions will ensure that all interstate telecommunications carriers and providers of telecommunications contribute, on an equitable, competitively neutral, and nondiscriminatory basis, to our mechanism for preserving and advancing universal service. For example, applying universal service obligations to providers of interconnected VoIP service is consistent with the principle of competitive neutrality. In the *Universal Service First Report and Order*, the Commission established competitive neutrality as a principle to guide the development of universal service policies. Competitive neutrality means that ''universal service support mechanisms and rules neither unfairly advantage nor disadvantage one provider over another, and neither unfairly favor nor disfavor one technology over another.'' The Commission has recognized that interconnected VoIP service is increasingly seen by consumers as a potential substitute for traditional telephone service. As interconnected VoIP service continues to grow, and to attract subscribers who previously relied on traditional telephone service, it becomes increasingly inappropriate to exclude interconnected VoIP service providers from universal service contribution obligations.

47. The interim modifications will provide near-term stability and sustainability for the Fund by responding to the fundamental changes in the telecommunications market while retaining the essential elements of the current approach to USF contributions. They also ensure that telecommunications carriers and providers of telecommunications contribute on an equitable, competitively neutral, and nondiscriminatory basis, to our mechanism for preserving and advancing universal service. For these reasons, the Order revises the existing approach for assessing contributions to the Fund.

2. Summary of Significant Issues Raised by Public Comments in Response to the IRFA

48. On June 15, 2006, the Office of Advocacy of the U.S. Small Business Administration (SBA) filed an *ex parte* letter with the Commission. In its letter, the SBA challenges the sufficiency of the Commission's IRFA released with the notice of proposed rulemaking in the *IP-Enabled Services* proceeding. The SBA states that the item itself ''did not propose specific regulations and the IRFA released with the proposal reflected this lack of specificity.'' The SBA states that the *IP-Enabled Services* IRFA ''makes no conclusions regarding which regulations, if any, would apply to any entity, including small entities.'' This analysis leads SBA to conclude that the Commission has not analyzed the economic impact of the actions taken in the Order on small businesses, and to recommend that the Commission defer action and complete an IRFA that it believes would meet the requirements of the RFA.

49. We disagree with SBA that the Commission should postpone taking action in this proceeding to change the safe harbor percentage for wireless carriers and to impose universal service obligations on interconnected VoIP providers, and instead issue a supplemental IRFA identifying and analyzing the economic impacts on small entities and less burdensome alternatives. We believe the additional steps suggested by SBA are unnecessary because small entities already have received sufficient notice of the issues addressed in today's Order and because the Commission has considered the economic impact on small entities and what ways are feasible to minimize the burdens imposed on those entities, and, to the extent feasible, has implemented less burdensome alternatives. Moreover, SBA's proposal to postpone and thus further delay these interim actions is antithetical to the core purpose of the Order, which is to ensure the near-term stability and sufficiency of the USF.

50. The Commission also received some general small business-related comments. Some commenters, for example, asserted that a connection-based methodology would be inequitable and burdensome for small businesses, particularly with respect to assessment of multi-line business connections based on the proposed tiers of capacity outlined in the *Further Notice.* Other commenters maintained that a *de minimis* exemption was essential to any contribution system adopted by the Commission. To the extent that these commenters' concerns are implicated by today's actions, they are discussed throughout the Order.

3. Description and Estimate of the Number of Small Entities to Which Rules Will Apply

51. The RFA directs agencies to provide a description of, and, where feasible, an estimate of the number of small entities that may be affected by the rules adopted herein. The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act, unless the Commission has developed one or more definitions that are appropriate to its activities. Under the Small Business Act, a ''small business concern'' is one that: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) meets any additional criteria established by the Small Business Administration (SBA).

52. The most reliable source of information regarding the total numbers of common carrier and related providers nationwide, including the numbers of commercial wireless entities, appears to be data the Commission publishes

annually in its *Trends in Telephone Service* report. According to data in the most recent report, there are 5,679 interstate carriers. These carriers include, *inter alia*, incumbent local exchange carriers, competitive local exchange carriers, competitive access providers, interexchange carriers, other wireline carriers and service providers (including shared-tenant service providers and private carriers), operator service providers, pay telephone operators, providers of telephone toll service, wireless carriers and services providers, and resellers.

53. Nationwide, there are a total of approximately 22.4 million small businesses, according to SBA data. A ''small organization'' is generally ''any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.'' Nationwide, as of 2002, there were approximately 1.6 million small organizations. The term ''small governmental jurisdiction'' is defined generally as ''governments of cities, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand.'' Census Bureau data for 2002 indicate that there were 87,525 local governmental jurisdictions in the United States. We estimate that, of this total, 84,377 entities were ''small governmental jurisdictions.'' Thus, we estimate that most governmental jurisdictions are small.

54. We have perhaps been overbroad in our list of entities directly affected, below, in an effort to encourage comment.

a. Wireline Carriers and Service Providers

55. We have included small incumbent local exchange carriers in this present RFA analysis. As noted above, a ''small business'' under the RFA is one that, inter alia, meets the pertinent small business size standard (e.g., a telephone communications business having 1,500 or fewer employees), and ''is not dominant in its field of operation.'' The SBA's Office of Advocacy contends that, for RFA purposes, small incumbent local exchange carriers are not dominant in their field of operation because any such dominance is not ''national'' in scope. We have therefore included small incumbent local exchange carriers in this RFA analysis, although we emphasize that this RFA action has no effect on Commission analyses and determinations in other, non-RFA contexts.

56. *Incumbent Local Exchange Carriers (LECs*). Neither the Commission nor the SBA has developed a small business size standard specifically for incumbent local exchange services. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 1,303 carriers have reported that they are engaged in the provision of incumbent local exchange services. Of these 1,303 carriers, an estimated 1,020 have 1,500 or fewer employees and 283 have more than 1,500 employees. Consequently, the Commission estimates that most providers of incumbent local exchange service are small businesses that may be affected by our action.

57. *Competitive Local Exchange Carriers (CLECs), Competitive Access Providers (CAPs), ''Shared-Tenant Service Providers.*'' *and ''Other Local Service Providers.''* Neither the Commission nor the SBA has developed a small business size standard specifically for these service providers. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 769 carriers have reported that they are engaged in the provision of either competitive access provider services or competitive local exchange carrier services. Of these 769 carriers, an estimated 676 have 1,500 or fewer employees and 93 have more than 1,500 employees. In addition, 12 carriers have reported that they are ''Shared-Tenant Service Providers,'' and all 12 are estimated to have 1,500 or fewer employees. In addition, 37 carriers have reported that they are ''Other Local Service Providers.'' Of the 39, an estimated 38 have 1,500 or fewer employees and one has more than 1,500 employees. Consequently, the Commission estimates that most providers of competitive local exchange service, competitive access providers, ''Shared-Tenant Service Providers,'' and ''Other Local Service Providers'' are small entities that may be affected by our action.

58. *Local Resellers.* The SBA has developed a small business size standard for the category of Telecommunications Resellers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 143 carriers have reported that they are engaged in the provision of local resale services. Of these, an estimated 141 have 1,500 or fewer employees and two have more than 1,500 employees. Consequently, the Commission estimates that the majority of local resellers are small entities that may be affected by our action.

59. *Toll Resellers.* The SBA has developed a small business size standard for the category of Telecommunications Resellers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 770 carriers have reported that they are engaged in the provision of toll resale services. Of these, an estimated 747 have 1,500 or fewer employees and 23 have more than 1,500 employees. Consequently, the Commission estimates that the majority of toll resellers are small entities that may be affected by our action.

60. *Payphone Service Providers (PSPs).* Neither the Commission nor the SBA has developed a small business size standard specifically for payphone services providers. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 654 carriers have reported that they are engaged in the provision of payphone services. Of these, an estimated 652 have 1,500 or fewer employees and two have more than 1,500 employees. Consequently, the Commission estimates that the majority of payphone service providers are small entities that may be affected by our action.

61. *Interexchange Carriers (IXCs).* Neither the Commission nor the SBA has developed a small business size standard specifically for providers of interexchange services. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 316 carriers have reported that they are engaged in the provision of interexchange service. Of these, an estimated 292 have 1,500 or fewer employees and 24 have more than 1,500 employees. Consequently, the Commission estimates that the majority of IXCs are small entities that may be affected by our action.

62. *Operator Service Providers (OSPs).* Neither the Commission nor the SBA has developed a small business size standard specifically for operator service providers. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to

Commission data, 23 carriers have reported that they are engaged in the provision of operator services. Of these, an estimated 20 have 1,500 or fewer employees and three have more than 1,500 employees. Consequently, the Commission estimates that the majority of OSPs are small entities that may be affected by our action.

63. *Prepaid Calling Card Providers.* Neither the Commission nor the SBA has developed a small business size standard specifically for prepaid calling card providers. The appropriate size standard under SBA rules is for the category Telecommunications Resellers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 89 carriers have reported that they are engaged in the provision of prepaid calling cards. Of these, an estimated 88 have 1,500 or fewer employees and one has more than 1,500 employees. Consequently, the Commission estimates that the majority of prepaid calling card providers are small entities that may be affected by our action.

64. *800 and 800-Like Service Subscribers.* Neither the Commission nor the SBA has developed a small business size standard specifically for 800 and 800-like service (''toll free'') subscribers. The appropriate size standard under SBA rules is for the category Telecommunications Resellers. Under that size standard, such a business is small if it has 1,500 or fewer employees. The most reliable source of information regarding the number of these service subscribers appears to be data the Commission collects on the 800, 888, and 877 numbers in use. According to our data, at the beginning of January 2005, the number of 800 numbers assigned was 7,540,453; the number of 888 numbers assigned was 5,947,789 and the number of 877 numbers assigned was 4,805,568. We do not have data specifying the number of these subscribers that are not independently owned and operated or have more than 1,500 employees, and thus are unable at this time to estimate with greater precision the number of toll free subscribers that would qualify as small businesses under the SBA size standard. Consequently, we estimate that there are 7,540,453 or fewer small entity 800 subscribers; 5,947,789 or fewer small entity 888 subscribers; and 4,805,568 or fewer small entity 877 subscribers.

b. International Service Providers

65. *Satellite Telecommunications and Other Telecommunications.* There is no small business size standard developed specifically for providers of international service. The appropriate size standards under SBA rules are for the two broad census categories of ''Satellite Telecommunications'' and ''Other Telecommunications.'' Under both categories, such a business is small if it has $13.5 million or less in average annual receipts.

66. The first category of Satellite Telecommunications ''comprises establishments primarily engaged in providing point-to-point telecommunications services to other establishments in the telecommunications and broadcasting industries by forwarding and receiving communications signals via a system of satellites or reselling satellite telecommunications.'' For this category, Census Bureau data for 2002 show that there were a total of 371 firms that operated for the entire year. Of this total, 307 firms had annual receipts of under $10 million, and 26 firms had receipts of $10 million to $24,999,999. Consequently, we estimate that the majority of Satellite Telecommunications firms are small entities that might be affected by our action.

67. The second category of Other Telecommunications ''comprises establishments primarily engaged in (1) providing specialized telecommunications applications, such as satellite tracking, communications telemetry, and radar station operations; or (2) providing satellite terminal stations and associated facilities operationally connected with one or more terrestrial communications systems and capable of transmitting telecommunications to or receiving telecommunications from satellite systems.'' For this category, Census Bureau data for 2002 show that there were a total of 332 firms that operated for the entire year. Of this total, 259 firms had annual receipts of under $10 million and 15 firms had annual receipts of $10 million to $24,999,999. Consequently, we estimate that the majority of Other Telecommunications firms are small entities that might be affected by our action.

c. Wireless Telecommunications Service Providers

68. Below, for those services subject to auctions, we note that, as a general matter, the number of winning bidders that qualify as small businesses at the close of an auction does not necessarily represent the number of small businesses currently in service. Also, the Commission does not generally track subsequent business size unless, in the context of assignments or transfers, unjust enrichment issues are implicated.

69. *Wireless Service Providers.* The SBA has developed a small business size standard for wireless firms within the two broad economic census categories of ''Paging'' and ''Cellular and Other Wireless Telecommunications.'' Under both categories, the SBA deems a wireless business to be small if it has 1,500 or fewer employees. For the census category of Paging, Census Bureau data for 2002 show that there were 807 firms in this category that operated for the entire year. Of this total, 804 firms had employment of 999 or fewer employees, and three firms had employment of 1,000 employees or more. Thus, under this category and associated small business size standard, the majority of firms can be considered small. For the census category of Cellular and Other Wireless Telecommunications, Census Bureau data for 2002 show that there were 1,397 firms in this category that operated for the entire year. Of this total, 1,378 firms had employment of 999 or fewer employees, and 19 firms had employment of 1,000 employees or more. Thus, under this second category and size standard, the majority of firms can, again, be considered small.

70. *Cellular Licensees.* The SBA has developed a small business size standard for wireless firms within the broad economic census category ''Cellular and Other Wireless Telecommunications.'' Under this SBA category, a wireless business is small if it has 1,500 or fewer employees. According to Commission data, 437 carriers reported that they were engaged in the provision of cellular service, Personal Communications Service (PCS), or Specialized Mobile Radio (SMR) Telephony services, which are placed together in the data. We have estimated that 260 of these are small, under the SBA small business size standard. Thus, under this category and size standard, the majority of firms can be considered small.

71. *Common Carrier Paging.* The SBA has developed a small business size standard for Paging, under which a business is small if it has 1,500 or fewer employees. According to Commission data, 375 carriers have reported that they are engaged in Paging or Messaging Service. Of these, an estimated 370 have 1,500 or fewer employees, and 5 have more than 1,500 employees. Consequently, the Commission estimates that the majority of paging providers are small entities that may be affected by our action. In addition, in the Paging *Third Report and Order*, we developed a small business size standard for ''small businesses'' and ''very small businesses'' for purposes of

determining their eligibility for special provisions such as bidding credits and installment payments. A ''small business'' is an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding $15 million for the preceding three years. Additionally, a ''very small business'' is an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than $3 million for the preceding three years. The SBA has approved these small business size standards. An auction of Metropolitan Economic Area licenses commenced on February 24, 2000, and closed on March 2, 2000. Of the 985 licenses auctioned, 440 were sold. Fifty-seven companies claiming small business status won.

72. *Wireless Communications Services.* This service can be used for fixed, mobile, radiolocation, and digital audio broadcasting satellite uses. The Commission established small business size standards for the wireless communications services (WCS) auction. A ''small business'' is an entity with average gross revenues of $40 million for each of the three preceding years, and a ''very small business'' is an entity with average gross revenues of $15 million for each of the three preceding years. The SBA has approved these small business size standards. The Commission auctioned geographic area licenses in the WCS service. In the auction, held in April 1997, there were seven winning bidders that qualified as ''very small business'' entities, and one that qualified as a ''small business'' entity.

73. *Wireless Telephony.* Wireless telephony includes cellular, personal communications services (PCS), and specialized mobile radio (SMR) telephony carriers. As noted earlier, the SBA has developed a small business size standard for ''Cellular and Other Wireless Telecommunications'' services. Under that SBA small business size standard, a business is small if it has 1,500 or fewer employees. According to Commission data, 437 carriers reported that they were engaged in the provision of wireless telephony. We have estimated that 260 of these are small under the SBA small business size standard.

74. *Broadband Personal Communications Service.* The broadband Personal Communications Service (PCS) spectrum is divided into six frequency blocks designated A through F, and the Commission has held auctions for each block. The Commission defined ''small entity'' for Blocks C and F as an entity that has average gross revenues of $40 million or less in the three previous calendar years. For Block F, an additional classification for ''very small business'' was added and is defined as an entity that, together with its affiliates, has average gross revenues of not more than $15 million for the preceding three calendar years.'' These standards defining ''small entity'' in the context of broadband PCS auctions have been approved by the SBA. No small businesses, within the SBA-approved small business size standards bid successfully for licenses in Blocks A and B. There were 90 winning bidders that qualified as small entities in the Block C auctions. A total of 93 small and very small business bidders won approximately 40 percent of the 1,479 licenses for Blocks D, E, and F. On March 23, 1999, the Commission re-auctioned 347 C, D, E, and F Block licenses. There were 48 small business winning bidders. On January 26, 2001, the Commission completed the auction of 422 C and F Broadband PCS licenses in Auction No. 35. Of the 35 winning bidders in this auction, 29 qualified as ''small'' or ''very small'' businesses. Subsequent events, concerning Auction 35, including judicial and agency determinations, resulted in a total of 163 C and F Block licenses being available for grant.

75. *Narrowband Personal Communications Services.* To date, two auctions of narrowband personal communications services (PCS) licenses have been conducted. For purposes of the two auctions that have already been held, ''small businesses'' were entities with average gross revenues for the prior three calendar years of $40 million or less. Through these auctions, the Commission has awarded a total of 41 licenses, out of which 11 were obtained by small businesses. To ensure meaningful participation of small business entities in future auctions, the Commission has adopted a two-tiered small business size standard in the *Narrowband PCS Second Report and Order.* A ''small business'' is an entity that, together with affiliates and controlling interests, has average gross revenues for the three preceding years of not more than $40 million. A ''very small business'' is an entity that, together with affiliates and controlling interests, has average gross revenues for the three preceding years of not more than $15 million. The SBA has approved these small business size standards. In the future, the Commission will auction 459 licenses to serve Metropolitan Trading Areas (MTAs) and 408 response channel licenses. There is also one megahertz of narrowband PCS spectrum that has been held in reserve and that the Commission has not yet decided to release for licensing. The Commission cannot predict accurately the number of licenses that will be awarded to small entities in future auctions. However, four of the 16 winning bidders in the two previous narrowband PCS auctions were small businesses, as that term was defined. The Commission assumes, for purposes of this analysis, that a large portion of the remaining narrowband PCS licenses will be awarded to small entities. The Commission also assumes that at least some small businesses will acquire narrowband PCS licenses by means of the Commission's partitioning and disaggregation rules.

76. *220 MHz Radio Service—Phase I Licensees.* The 220 MHz service has both Phase I and Phase II licenses. Phase I licensing was conducted by lotteries in 1992 and 1993. There are approximately 1,515 such non-nationwide licensees and four nationwide licensees currently authorized to operate in the 220 MHz band. The Commission has not developed a small business size standard for small entities specifically applicable to such incumbent 220 MHz Phase I licensees. To estimate the number of such licensees that are small businesses, we apply the small business size standard under the SBA rules applicable to ''Cellular and Other Wireless Telecommunications'' companies. This category provides that a small business is a wireless company employing no more than 1,500 persons. The Commission estimates that nearly all such licensees are small businesses under the SBA's small business size standard.

77. *220 MHz Radio Service—Phase II Licensees.* The Phase II 220 MHz service is a new service, and is subject to spectrum auctions. In the *220 MHz Third Report and Order*, we adopted a small business size standard for ''small'' and ''very small'' businesses for purposes of determining their eligibility for special provisions such as bidding credits and installment payments. This small business size standard indicates that a ''small business'' is an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding $15 million for the preceding three years. A ''very small business'' is an entity that, together with its affiliates and controlling principals, has average gross revenues that do not exceed $3 million for the preceding three years. The SBA has approved these small business size standards. Auctions of Phase II licenses commenced on September 15, 1998, and closed on October 22, 1998. In the first

auction, 908 licenses were auctioned in three different-sized geographic areas: three nationwide licenses, 30 Regional Economic Area Group (EAG) Licenses, and 875 Economic Area (EA) Licenses. Of the 908 licenses auctioned, 693 were sold. Thirty-nine small businesses won licenses in the first 220 MHz auction. The second auction included 225 licenses: 216 EA licenses and 9 EAG licenses. Fourteen companies claiming small business status won 158 licenses.

78. *800 MHz and 900 MHz Specialized Mobile Radio Licenses.* The Commission awards ''small entity'' and ''very small entity'' bidding credits in auctions for Specialized Mobile Radio (SMR) geographic area licenses in the 800 MHz and 900 MHz bands to firms that had revenues of no more than $15 million in each of the three previous calendar years, or that had revenues of no more than $3 million in each of the previous calendar years, respectively. These bidding credits apply to SMR providers in the 800 MHz and 900 MHz bands that either hold geographic area licenses or have obtained extended implementation authorizations. The Commission does not know how many firms provide 800 MHz or 900 MHz geographic area SMR service pursuant to extended implementation authorizations, nor how many of these providers have annual revenues of no more than $15 million. One firm has over $15 million in revenues. The Commission assumes, for purposes here, that all of the remaining existing extended implementation authorizations are held by small entities, as that term is defined by the SBA. The Commission has held auctions for geographic area licenses in the 800 MHz and 900 MHz SMR bands. There were 60 winning bidders that qualified as small or very small entities in the 900 MHz SMR auctions. Of the 1,020 licenses won in the 900 MHz auction, bidders qualifying as small or very small entities won 263 licenses. In the 800 MHz auction, 38 of the 524 licenses won were won by small and very small entities.

79. *700 MHz Guard Band Licensees.* In the *700 MHz Guard Band Order*, we adopted a small business size standard for ''small businesses'' and ''very small businesses'' for purposes of determining their eligibility for special provisions such as bidding credits and installment payments. A ''small business'' as an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding $15 million for the preceding three years. Additionally, a ''very small business'' is an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than $3 million for the preceding three years. An auction of 52 Major Economic Area (MEA) licenses commenced on September 6, 2000, and closed on September 21, 2000. Of the 104 licenses auctioned, 96 licenses were sold to nine bidders. Five of these bidders were small businesses that won a total of 26 licenses. A second auction of 700 MHz Guard Band licenses commenced on February 13, 2001 and closed on February 21, 2001. All eight of the licenses auctioned were sold to three bidders. One of these bidders was a small business that won a total of two licenses.

80. *Rural Radiotelephone Service.* The Commission has not adopted a size standard for small businesses specific to the Rural Radiotelephone Service. A significant subset of the Rural Radiotelephone Service is the Basic Exchange Telephone Radio System (BETRS). The Commission uses the SBA's small business size standard applicable to ''Cellular and Other Wireless Telecommunications,'' *i.e.*, an entity employing no more than 1,500 persons. There are approximately 1,000 licensees in the Rural Radiotelephone Service, and the Commission estimates that there are 1,000 or fewer small entity licensees in the Rural Radiotelephone Service that may be affected by the rules and policies adopted herein.

81. *Air-Ground Radiotelephone Service.* The Commission has not adopted a small business size standard specific to the Air-Ground Radiotelephone Service. We will use SBA's small business size standard applicable to ''Cellular and Other Wireless Telecommunications,'' *i.e.*, an entity employing no more than 1,500 persons. There are approximately 100 licensees in the Air-Ground Radiotelephone Service, and we estimate that almost all of them qualify as small under the SBA small business size standard.

82. *Aviation and Marine Radio Services.* Small businesses in the aviation and marine radio services use a very high frequency (VHF) marine or aircraft radio and, as appropriate, an emergency position-indicating radio beacon (and/or radar) or an emergency locator transmitter. The Commission has not developed a small business size standard specifically applicable to these small businesses. For purposes of this analysis, the Commission uses the SBA small business size standard for the category ''Cellular and Other Telecommunications,'' which is 1,500 or fewer employees. Most applicants for recreational licenses are individuals. Approximately 581,000 ship station licensees and 131,000 aircraft station licensees operate domestically and are not subject to the radio carriage requirements of any statute or treaty. For purposes of our evaluations in this analysis, we estimate that there are up to approximately 712,000 licensees that are small businesses (or individuals) under the SBA standard. In addition, between December 3, 1998 and December 14, 1998, the Commission held an auction of 42 VHF Public Coast licenses in the 157.1875–157.4500 MHz (ship transmit) and 161.775–162.0125 MHz (coast transmit) bands. For purposes of the auction, the Commission defined a ''small'' business as an entity that, together with controlling interests and affiliates, has average gross revenues for the preceding three years not to exceed $15 million dollars. In addition, a ''very small'' business is one that, together with controlling interests and affiliates, has average gross revenues for the preceding three years not to exceed $3 million dollars. There are approximately 10,672 licensees in the Marine Coast Service, and the Commission estimates that almost all of them qualify as ''small'' businesses under the above special small business size standards.

83. *Fixed Microwave Services.* Fixed microwave services include common carrier, private operational-fixed, and broadcast auxiliary radio services. At present, there are approximately 22,015 common carrier fixed licensees and 61,670 private operational-fixed licensees and broadcast auxiliary radio licensees in the microwave services. The Commission has not created a size standard for a small business specifically with respect to fixed microwave services. For purposes of this analysis, the Commission uses the SBA small business size standard for the category ''Cellular and Other Telecommunications,'' which is 1,500 or fewer employees. The Commission does not have data specifying the number of these licensees that have more than 1,500 employees, and thus is unable at this time to estimate with greater precision the number of fixed microwave service licensees that would qualify as small business concerns under the SBA's small business size standard. Consequently, the Commission estimates that there are up to 22,015 common carrier fixed licensees and up to 61,670 private operational-fixed licensees and broadcast auxiliary radio licensees in the microwave services that may be small and may be affected by the rules and policies adopted herein. We noted, however, that the common carrier

microwave fixed licensee category includes some large entities.

84. *Offshore Radiotelephone Service.* This service operates on several UHF television broadcast channels that are not used for television broadcasting in the coastal areas of states bordering the Gulf of Mexico. There are presently approximately 55 licensees in this service. We are unable to estimate at this time the number of licensees that would qualify as small under the SBA's small business size standard for ''Cellular and Other Wireless Telecommunications'' services. Under that SBA small business size standard, a business is small if it has 1,500 or fewer employees.

85. *39 GHz Service.* The Commission created a special small business size standard for 39 GHz licenses—an entity that has average gross revenues of $40 million or less in the three previous calendar years. An additional size standard for ''very small business'' is: an entity that, together with affiliates, has average gross revenues of not more than $15 million for the preceding three calendar years. The SBA has approved these small business size standards. The auction of the 2,173 39 GHz licenses began on April 12, 2000 and closed on May 8, 2000. The 18 bidders who claimed small business status won 849 licenses. Consequently, the Commission estimates that 18 or fewer 39 GHz licensees are small entities that may be affected by the rules and polices adopted herein.

86. *Multipoint Distribution Service, Multichannel Multipoint Distribution Service, and ITFS.* Multichannel Multipoint Distribution Service (MMDS) systems, often referred to as ''wireless cable,'' transmit video programming to subscribers using the microwave frequencies of the Multipoint Distribution Service (MDS) and Instructional Television Fixed Service (ITFS). In connection with the 1996 MDS auction, the Commission established a small business size standard as an entity that had annual average gross revenues of less than $40 million in the previous three calendar years. The MDS auctions resulted in 67 successful bidders obtaining licensing opportunities for 493 Basic Trading Areas (BTAs). Of the 67 auction winners, 61 met the definition of a small business. MDS also includes licensees of stations authorized prior to the auction. In addition, the SBA has developed a small business size standard for Cable and Other Program Distribution, which includes all such companies generating $12.5 million or less in annual receipts. According to Census Bureau data for 1997, there were a total of 1,311 firms in this category, total, that had operated for the entire year. Of this total, 1,180 firms had annual receipts of under $10 million and an additional 52 firms had receipts of $10 million or more but less than $25 million. Consequently, we estimate that the majority of providers in this service category are small businesses that may be affected by the rules and policies adopted herein. This SBA small business size standard also appears applicable to ITFS. There are presently 2,032 ITFS licensees. All but 100 of these licenses are held by educational institutions. Educational institutions are included in this analysis as small entities. Thus, we tentatively conclude that at least 1,932 licensees are small businesses.

87. *Local Multipoint Distribution Service.* Local Multipoint Distribution Service (LMDS) is a fixed broadband point-to-multipoint microwave service that provides for two-way video telecommunications. The auction of the 1,030 Local Multipoint Distribution Service (LMDS) licenses began on February 18, 1998 and closed on March 25, 1998. The Commission established a small business size standard for LMDS licenses as an entity that has average gross revenues of less than $40 million in the three previous calendar years. An additional small business size standard for ''very small business'' was added as an entity that, together with its affiliates, has average gross revenues of not more than $15 million for the preceding three calendar years. The SBA has approved these small business size standards in the context of LMDS auctions. There were 93 winning bidders that qualified as small entities in the LMDS auctions. A total of 93 small and very small business bidders won approximately 277 A Block licenses and 387 B Block licenses. On March 27, 1999, the Commission re-auctioned 161 licenses; there were 40 winning bidders. Based on this information, we conclude that the number of small LMDS licenses consists of the 93 winning bidders in the first auction and the 40 winning bidders in the re-auction, for a total of 133 small entity LMDS providers.

88. *218–219 MHz Service.* The first auction of 218–219 MHz spectrum resulted in 170 entities winning licenses for 594 Metropolitan Statistical Area (MSA) licenses. Of the 594 licenses, 557 were won by entities qualifying as a small business. For that auction, the small business size standard was an entity that, together with its affiliates, has no more than a $6 million net worth and, after federal income taxes (excluding any carry over losses), has no more than $2 million in annual profits each year for the previous two years. In the *218–219 MHz Report and Order and Memorandum Opinion and Order,* we established a small business size standard for a ''small business'' as an entity that, together with its affiliates and persons or entities that hold interests in such an entity and their affiliates, has average annual gross revenues not to exceed $15 million for the preceding three years. A ''very small business'' is defined as an entity that, together with its affiliates and persons or entities that hold interests in such an entity and its affiliates, has average annual gross revenues not to exceed $3 million for the preceding three years. These size standards will be used in future auctions of 218–219 MHz spectrum.

89. *24 GHz—Incumbent Licensees.* This analysis may affect incumbent licensees who were relocated to the 24 GHz band from the 18 GHz band, and applicants who wish to provide services in the 24 GHz band. The applicable SBA small business size standard is that of ''Cellular and Other Wireless Telecommunications'' companies. This category provides that such a company is small if it employs no more than 1,500 persons. We believe that there are only two licensees in the 24 GHz band that were relocated from the 18 GHz band, Teligent and TRW, Inc. It is our understanding that Teligent and its related companies have less than 1,500 employees, though this may change in the future. TRW is not a small entity. Thus, only one incumbent licensee in the 24 GHz band is a small business entity.

90. *24 GHz—Future Licensees.* With respect to new applicants in the 24 GHz band, the small business size standard for ''small business'' is an entity that, together with controlling interests and affiliates, has average annual gross revenues for the three preceding years not in excess of $15 million. ''Very small business'' in the 24 GHz band is an entity that, together with controlling interests and affiliates, has average gross revenues not exceeding $3 million for the preceding three years. The SBA has approved these small business size standards. These size standards will apply to the future auction, if held.

d. Cable and OVS Operators

91. *Cable and Other Program Distribution.* The Census Bureau defines this category as follows: ''This industry comprises establishments primarily engaged as third-party distribution systems for broadcast programming. The establishments of this industry deliver visual, aural, or textual programming received from cable networks, local

television stations, or radio networks to consumers via cable or direct-to-home satellite systems on a subscription or fee basis. These establishments do not generally originate programming material.'' The SBA has developed a small business size standard for Cable and Other Program Distribution, which is: All such firms having $13.5 million or less in annual receipts. According to Census Bureau data for 2002, there were a total of 1,191 firms in this category that operated for the entire year. Of this total, 1,087 firms had annual receipts of under $10 million, and 43 firms had receipts of $10 million or more but less than $25 million. Thus, under this size standard, the majority of firms can be considered small.

92. *Cable Companies and Systems.* The Commission has also developed its own small business size standards, for the purpose of cable rate regulation. Under the Commission's rules, a ''small cable company'' is one serving 400,000 or fewer subscribers, nationwide. Industry data indicate that, of 1,076 cable operators nationwide, all but eleven are small under this size standard. In addition, under the Commission's rules, a ''small system'' is a cable system serving 15,000 or fewer subscribers. Industry data indicate that, of 7,208 systems nationwide, 6,139 systems have under 10,000 subscribers, and an additional 379 systems have 10,000–19,999 subscribers. Thus, under this second size standard, most cable systems are small.

93. *Cable System Operators.* The Communications Act of 1934, as amended, also contains a size standard for small cable system operators, which is ''a cable operator that, directly or through an affiliate, serves in the aggregate fewer than 1 percent of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed $250,000,000.'' The Commission has determined that an operator serving fewer than 677,000 subscribers shall be deemed a small operator, if its annual revenues, when combined with the total annual revenues of all its affiliates, do not exceed $250 million in the aggregate. Industry data indicate that, of 1,076 cable operators nationwide, all but ten are small under this size standard. We note that the Commission neither requests nor collects information on whether cable system operators are affiliated with entities whose gross annual revenues exceed $250 million, and therefore we are unable to estimate more accurately the number of cable system operators that would qualify as small under this size standard.

94. *Open Video Services.* Open Video Service (OVS) systems provide subscription services. As noted above, the SBA has created a small business size standard for Cable and Other Program Distribution. This standard provides that a small entity is one with $13.5 million or less in annual receipts. The Commission has certified approximately 25 OVS operators to serve 75 areas, and some of these are currently providing service. Affiliates of Residential Communications Network, Inc. (RCN) received approval to operate OVS systems in New York City, Boston, Washington, D.C., and other areas. RCN has sufficient revenues to assure that they do not qualify as a small business entity. Little financial information is available for the other entities that are authorized to provide OVS and are not yet operational. Given that some entities authorized to provide OVS service have not yet begun to generate revenues, the Commission concludes that up to 24 OVS operators (those remaining) might qualify as small businesses that may be affected by the rules and policies adopted herein.

e. Internet Service Providers

95. *Internet Service Providers.* The SBA has developed a small business size standard for Internet Service Providers (ISPs). ISPs ''provide clients access to the Internet and generally provide related services such as web hosting, web page designing, and hardware or software consulting related to Internet connectivity.'' Under the SBA size standard, such a business is small if it has average annual receipts of $23 million or less. According to Census Bureau data for 2002, there were 2,529 firms in this category that operated for the entire year. Of these, 2,437 firms had annual receipts of under $10 million, and an additional 47 firms had receipts of between $10 million and $24, 999,999. Consequently, we estimate that the majority of these firms are small entities that may be affected by our action.

f. Other Internet-Related Entities

96. *Web Search Portals.* Our action pertains to VoIP services, which could be provided by entities that provide other services such as e-mail, online gaming, web browsing, video conferencing, instant messaging, and other, similar IP-enabled services. The Commission has not adopted a size standard for entities that create or provide these types of services or applications. However, the Census Bureau has identified firms that ''operate web sites that use a search engine to generate and maintain extensive databases of Internet addresses and content in an easily searchable format. Web search portals often provide additional Internet services, such as e-mail, connections to other web sites, auctions, news, and other limited content, and serve as a home base for Internet users.'' The SBA has developed a small business size standard for this category; that size standard is $6.5 million or less in average annual receipts. According to Census Bureau data for 2002, there were 342 firms in this category that operated for the entire year. Of these, 303 had annual receipts of under $5 million, and an additional 15 firms had receipts of between $5 million and $9,999,999. Consequently, we estimate that the majority of these firms are small entities that may be affected by our action.

97. *Data Processing, Hosting, and Related Services.* Entities in this category ''primarily * * * provid[e] infrastructure for hosting or data processing services.'' The SBA has developed a small business size standard for this category; that size standard is $23 million or less in average annual receipts. According to Census Bureau data for 2002, there were 6,877 firms in this category that operated for the entire year. Of these, 6,418 had annual receipts of under $10 million, and an additional 251 firms had receipts of between $10 million and $24,999,999. Consequently, we estimate that the majority of these firms are small entities that may be affected by our action.

98. *All Other Information Services.* ''This industry comprises establishments primarily engaged in providing other information services (except new syndicates and libraries and archives).'' Our action pertains to VoIP services, which could be provided by entities that provide other services such as e-mail, online gaming, web browsing, video conferencing, instant messaging, and other, similar IP-enabled services. The SBA has developed a small business size standard for this category; that size standard is $6.5 million or less in average annual receipts. According to Census Bureau data for 2002, there were 155 firms in this category that operated for the entire year. Of these, 138 had annual receipts of under $5 million, and an additional four firms had receipts of between $5 million and $9,999,999. Consequently, we estimate that the majority of these firms are small entities that may be affected by our action.

99. *Internet Publishing and Broadcasting.* ''This industry comprises establishments engaged in publishing and/or broadcasting content on the

Internet exclusively. These establishments do not provide traditional (non-Internet) versions of the content that they publish or broadcast.'' The SBA has developed a small business size standard for this census category; that size standard is 500 or fewer employees. According to Census Bureau data for 2002, there were 1,362 firms in this category that operated for the entire year. Of these, 1,351 had employment of 499 or fewer employees, and six firms had employment of between 500 and 999. Consequently, we estimate that the majority of these firms small entities that may be affected by our action.

100. *Software Publishers.* These companies may design, develop or publish software and may provide other support services to software purchasers, such as providing documentation or assisting in installation. The companies may also design software to meet the needs of specific users. The SBA has developed a small business size standard of $23 million or less in average annual receipts for all of the following pertinent categories: Software Publishers, Custom Computer Programming Services, and Other Computer Related Services. For Software Publishers, Census Bureau data for 2002 indicate that there were 6,155 firms in the category that operated for the entire year. Of these, 7,633 had annual receipts of under $10 million, and an additional 403 firms had receipts of between $10 million and $24,999,999. For providers of Custom Computer Programming Services, the Census Bureau data indicate that there were 32,269 firms that operated for the entire year. Of these, 31,416 had annual receipts of under $10 million, and an additional 565 firms had receipts of between $10 million and $24,999,999. For providers of Other Computer Related Services, the Census Bureau data indicate that there were 6,357 firms that operated for the entire year. Of these, 6,187 had annual receipts of under $10 million, and an additional 101 firms had receipts of between $10 million and $24,999,999. Consequently, we estimate that the majority of the firms in each of these three categories are small entities that may be affected by our action.

4. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

101. As discussed in detail in the Order, the modifications to the reporting system only expand the scope of entities that are required to report to include interconnected VoIP service providers. Under the modified reporting system, contributors will continue to report projected and historical revenues on Form 499–Q and their annual revenues on the Form 499–A. Failure to file the required form by the applicable deadline, or failure to file accurate information on the form, could subject a contributor to enforcement action. In addition, we note that we retain the requirement for an officer to certify to the truthfulness and accuracy of the Form 499 submitted to USAC. To ensure that contributors report correct information, we also require all contributors to maintain records and documentation to justify the information reported in the Form 499, and to provide such records and documentation to the Commission and to USAC upon request.

102. Our action today raises the wireless safe harbor and imposes new USF contribution obligations on interconnected VoIP providers. We note, however, that neither wireless providers nor interconnected VoIP providers are required to use the safe harbors established in this order; they have the additional options of basing their contributions on actual interstate and international revenues, or of relying on a traffic study. We emphasize once again that the interim actions adopted in the Order are necessary to ensure that all interstate telecommunications carriers and providers of telecommunications contribute, on an equitable, competitively neutral, and nondiscriminatory basis, to our mechanism for preserving and advancing universal service.

5. Steps Taken To Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

103. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): ''(1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.''

104. With respect to wireless providers, the Commission considered and rejected setting the interim safe harbor higher than the 37.1 percent established in this Order. Similarly, the Commission considered and rejected a requirement that interconnected VoIP providers contribute on 100 percent of their end-user revenues. Thus both wireless and interconnected VoIP providers—especially smaller entities—benefit from being able to use a lower safe harbor to report their interstate and international end-user revenues.

105. The Commission's application of the *de minimis* exception to interconnected VoIP providers remains the best means of minimizing the impact on small entities of adopting our interim changes to USF contribution methodology. The *de minimis* exception protects small businesses and ensures that compliance costs associated with contributing to universal service do not exceed actual contribution amounts. As noted by several commenters, the *de minimis* exemption is critical to curtailing the potential administrative costs of contributing for small entities.

106. *Report to Congress:* The Commission will send a copy of the Order, including this FRFA, in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act. In addition, the Commission will send a copy of the Order, including this FRFA, to the Chief Counsel for Advocacy of the SBA. A copy of this present summarized Order and FRFA is also hereby published in the **Federal Register**.

Ordering Clauses

107. Accordingly, *it is ordered* that, pursuant to sections 1, 2, 4(i), 4(j), 201, 202, 218–220, 254, and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 151, 152, 154(i)–(j), 201, 202, 218–220, 254, and 303(r), this Report and Order and Notice of Proposed Rulemaking in WC Docket No. 06–122, CC Docket No. 96–45, CC Docket No. 98–171, CC Docket No. 90–571, CC Docket No. 92–237/NSD File No. L–00–72, CC Docket No. 99–200, CC Docket No. 95–116, CC Docket No. 98–170, and WC Docket No. 04–36 is adopted, part 54 of the Commission's rules, 47 CFR Part 54, is amended as set forth in Appendix A, Form 499–A is amended as set forth in Appendix C, and Form 499–Q is amended as set forth in Appendix D. These rules contain information collection requirements that have not been approved by OMB. The Commission will publish a document in the **Federal Register** announcing the effective date.

108. *It is further ordered* that, pursuant to sections 1, 2, 4(i), 4(j), 201, 202, 218–220, 254, and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 151, 152, 154(i)–(j), 201, 202, 218–220, 254, and 303(r), any mobile wireless provider that uses a

traffic study to report actual interstate revenue data for universal service contribution purposes shall submit the traffic study to the Commission and to USAC.

109. *It is further ordered* that, pursuant to sections 1, 2, 4(i), 4(j), 201, 202, 218–220, 254, and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 151, 152, 154(i)–(j), 201, 202, 218–220, 254, and 303(r), any provider of interconnected VoIP service that proposes to use a traffic study to report actual interstate revenue data for universal service contribution purposes shall petition the Commission for approval of its proposed traffic study.

110. *It is further ordered* that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, shall send a copy of this Report and Order, including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects in 47 CFR Parts 1 and 54

Interconnected voice over Internet protocol services, Communications, Telecommunications, Telephone, Reporting and recordkeeping requirements.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

Final Rules

■ For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR parts 1 and 54 as follows:

PART 1—PRACTICE AND PROCEDURE

■ 1. The authority citation for part 1 continues to read as follows:

Authority: 15 U.S.C. 79 *et seq.*; 47 U.S.C. 151, 154(i), 154(j), 155, 157, 225, and 303(r).

■ 2. Amend § 1.47 by revising paragraph (h) to read as follows:

§ 1.47 Service of documents and proof of service.

* * * * *

(h) Every common carrier and interconnected VoIP provider, as defined in § 54.5 of this chapter, that is subject to the Communications Act of 1934, as amended, shall designate an agent in the District of Columbia, and may designate additional agents if it so chooses, upon whom service of all notices, process, orders, decisions, and requirements of the Commission may be made for and on behalf of such carrier or interconnected VoIP provider in any proceeding before the Commission. Such designation shall include, for both the carrier or interconnected VoIP provider and its designated agents, a name, business address, telephone or voicemail number, facsimile number, and, if available, Internet e-mail address. Such carrier or interconnected VoIP provider shall additionally list any other names by which it is known or under which it does business, and, if the carrier or interconnected VoIP provider is an affiliated company, the parent, holding, or management company. Within thirty (30) days of the commencement of provision of service, such carrier or interconnected VoIP provider shall file such information with the Chief of the Enforcement Bureau's Market Disputes Resolution Division. Such carriers and interconnected VoIP providers may file a hard copy of the relevant portion of the Telecommunications Reporting Worksheet, as delineated by the Commission in the **Federal Register**, to satisfy this requirement. Each Telecommunications Reporting Worksheet filed annually by a common carrier or interconnected VoIP provider must contain a name, business address, telephone or voicemail number, facsimile number, and, if available, Internet e-mail address for its designated agents, regardless of whether such information has been revised since the previous filing. Carriers and interconnected VoIP providers must notify the Commission within one week of any changes in their designation information by filing revised portions of the Telecommunications Reporting Worksheet with the Chief of the Enforcement Bureau's Market Disputes Resolution Division. A paper copy of this designation list shall be maintained in the Office of the Secretary of the Commission. Service of any notice, process, orders, decisions or requirements of the Commission may be made upon such carrier or interconnected VoIP provider by leaving a copy thereof with such designated agent at his office or usual place of residence. If such carrier or interconnected VoIP provider fails to designate such an agent, service of any notice or other process in any proceeding before the Commission, or of any order, decision, or requirement of the Commission, may be made by posting such notice, process, order, requirement, or decision in the Office of the Secretary of the Commission.

PART 54—UNIVERSAL SERVICE

■ 3. The authority citation for part 54 continues to read as follows:

Authority: 47 U.S.C. 1, 4(i), 201, 205, 214, and 254 unless otherwise noted.

■ 4. Amend § 54.5 by revising the definition of ''*contributor*'' and adding the definition of ''interconnected VoIP provider'' in alphabetical order to read as follows:

§ 54.5 Terms and definitions.

* * * * *

Contributor. The term ''contributor'' shall refer to an entity required to contribute to the universal service support mechanisms pursuant to § 54.706.

* * * * *

Interconnected VoIP Provider. An ''interconnected VoIP provider'' is an entity that provides interconnected VoIP service, as that term is defined in section 9.3 of these rules.

* * * * *

■ 5. Amend § 54.706 by revising paragraphs (a) introductory text, (a)(16), (a)(17), by adding paragraph (a)(18), and by revising paragraphs (b) and (c) to read as follows:

§ 54.706 Contributions.

(a) Entities that provide interstate telecommunications to the public, or to such classes of users as to be effectively available to the public, for a fee will be considered telecommunications carriers providing interstate telecommunications services and must contribute to the universal service support mechanisms. Certain other providers of interstate telecommunications, such as payphone providers that are aggregators, providers of interstate telecommunications for a fee on a non-common carrier basis, and interconnected VoIP providers, also must contribute to the universal service support mechanisms. Interstate telecommunications include, but are not limited to:

* * * * *

(16) Resale of interstate services;

(17) Payphone services; and

(18) Interconnected VoIP services.

(b) Except as provided in paragraph (c) of this section, every entity required to contribute to the federal universal service support mechanisms under paragraph (a) of this section shall contribute on the basis of its projected collected interstate and international end-user telecommunications revenues, net of projected contributions.

(c) Any entity required to contribute to the federal universal service support mechanisms whose projected collected interstate end-user telecommunications revenues comprise less than 12 percent of its combined projected collected interstate and international end-user telecommunications revenues shall

contribute based only on such entity's projected collected interstate end-user telecommunications revenues, net of projected contributions. For purposes of this paragraph, an ''entity'' shall refer to the entity that is subject to the universal service reporting requirements in § 54.711 and shall include all of that entity's affiliated providers of interstate and international telecommunications and telecommunications services.

* * * * *

■ 6. Amend § 54.708 by adding a new sentence after the first sentence to read as follows:

§ 54.708 De minimis exemption.

* * * The foregoing notwithstanding, all interconnected VoIP providers, including those whose contributions would be *de minimis*, must file the Telecommunications Reporting Worksheet. * * *

■ 7. Amend § 54.712 by revising the section heading and paragraph (a) to read as follows:

§ 54.712 Contributor recovery of universal service costs from end users.

(a) Federal universal service contribution costs may be recovered through interstate telecommunications-related charges to end users. If a contributor chooses to recover its federal universal service contribution costs through a line item on a customer's bill the amount of the federal universal service line-item charge may not exceed the interstate telecommunications portion of that customer's bill times the relevant contribution factor.

* * * * *

[FR Doc. 06–6059 Filed 7–7–06; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[I.D. 070306A]

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Shrimp Fishery of the Gulf of Mexico; Texas Closure

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Adjustment of the ending date of the Texas closure.

SUMMARY: NMFS announces an adjustment to the ending date of the annual closure of the shrimp fishery in the exclusive economic zone (EEZ) off Texas. The closure is normally from May 15 to July 15 each year. For 2006, the closure began on May 15, and will end at 30 minutes after sunset on July 10. The Texas closure is intended to prohibit the harvest of brown shrimp during their major emigration from Texas estuaries to the Gulf of Mexico so the shrimp may reach a larger, more valuable size and to prevent the waste of brown shrimp that would be discarded in fishing operations because of their small size.

DATES: The EEZ off Texas is open to trawl fishing from 30 minutes after sunset on July 10, 2006.

FOR FURTHER INFORMATION CONTACT: Dr. Steve Branstetter, 727–824–5305; fax: 727–824–5308; e-mail: *Steve.Branstetter@noaa.gov*.

SUPPLEMENTARY INFORMATION: The Gulf of Mexico shrimp fishery is managed under the Fishery Management Plan for the Shrimp Fishery of the Gulf of Mexico (FMP). The FMP was prepared by the Gulf of Mexico Fishery Management Council and is implemented by regulations at 50 CFR part 622 under the authority of the Magnuson-Stevens Fishery Conservation and Management Act. The EEZ off Texas is normally closed to all trawling each year from 30 minutes after sunset on May 15 to 30 minutes after sunset on July 15. The regulations at 50 CFR 622.34(h) describe the area of the Texas closure and provide for adjustments to the beginning and ending dates by the Regional Administrator, Southeast Region, NMFS, under procedures and restrictions specified in the FMP.

The beginning and ending dates of the Texas closure are based on biological sampling by Texas Parks and Wildlife Department (TPWD). The closure date is established based on projected times that brown shrimp in Texas bays and estuaries will reach a mean size of 90 mm, and begin strong emigrations out of the bays and estuaries during maximum duration ebb tides. The waters off Texas are re-opened to shrimping when projections indicate that brown shrimp will reach a mean size of 112 mm, in concurrence with maximum duration ebb tides. Biological data collected by TPDW indicate that the criteria to end the Texas closure will be met on July 10, 2006. Accordingly, the time and date for ending the Texas closure is changed from 30 minutes after sunset on July 15, 2006, to 30 minutes after sunset on July 10, 2006.

Classification

This action is authorized by 50 CFR 622.34(h)(2) and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: July 3, 2006.

Alan D. Risenhoover,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 06–6098 Filed 7–5–06; 2:20 pm]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 060216045–6045–01; I.D. 070506A]

Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Ocean Perch in the Eastern Aleutian District of the Bering Sea and Aleutian Islands Management Area

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Temporary rule; closure.

SUMMARY: NMFS is prohibiting directed fishing for Pacific ocean perch in the Eastern Aleutian District of the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to prevent exceeding the 2006 Pacific ocean perch total allowable catch (TAC) in the Eastern Aleutian District of the BSAI.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), July 5, 2006, through 2400 hrs, A.l.t., December 31, 2006.

FOR FURTHER INFORMATION CONTACT: Josh Keaton, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the BSAI according to the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The 2006 Pacific ocean perch TAC in the Eastern Aleutian District of the BSAI is 2,849 metric tons (mt) as established by the 2006 and 2007 final harvest specifications for groundfish in the BSAI (71 FR 10894, March 3, 2006).

In accordance with § 679.20(d)(1)(i), the Administrator, Alaska Region, NMFS, has determined that the 2006 Pacific ocean perch TAC in the Eastern Aleutian District of the BSAI will soon be reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 2,618 mt, and is setting aside the remaining 231 mt as bycatch to support other anticipated groundfish fisheries. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance has been reached. Consequently, NMFS is prohibiting directed fishing for Pacific ocean perch in the Eastern Aleutian District of the BSAI.

After the effective date of this closure the maximum retainable amounts at § 679.20(e) and (f) apply at any time during a trip.

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from the most recent fisheries data in a timely fashion and would delay the closure of Pacific ocean perch in the Eastern Aleutian District of the BSAI. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of July 3, 2006.

The AA also finds good cause to waive the 30-day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

This action is required by § 679.20 and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: July 5, 2006.

James P. Burgess,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 06–6097 Filed 7–5–06; 2:20 pm]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 71, No. 131
Monday, July 10, 2006

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

10 CFR Part 431

[Docket No. EE–DET–02–002]

RIN 1904–AA87

Energy Conservation Program for Certain Industrial Equipment: Determination Concerning the Potential for Energy Conservation Standards for Small Electric Motors

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Departmental determination.

SUMMARY: The Department of Energy (DOE or the Department) has determined, based on the best information currently available, that energy conservation standards for certain single-phase, capacitor-start, induction-run, small electric motors are technologically feasible and economically justified, and would result in significant energy savings. This determination initiates the process of establishing, by notice and comment rulemaking, test procedures and energy conservation standards for this equipment.

ADDRESSES: For access to the docket (EE–DET–02–002) to read background documents or comments received, visit the U.S. Department of Energy, Forrestal Building, Room 1J–018 (Resource Room of the Building Technologies Program), 1000 Independence Avenue, SW., Washington, DC, (202) 586–2945, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays. Please call Ms. Brenda Edwards-Jones at the above telephone number for additional information regarding visiting the Resource Room. Please note: The Department's Freedom of Information Reading Room (formerly Room 1E–190 at the Forrestal Building) is no longer housing rulemaking materials.

FOR FURTHER INFORMATION CONTACT: Antonio Bouza, U.S. Department of Energy, Building Technologies Program (EE–2J), Office of Energy Efficiency and Renewable Energy, 1000 Independence Avenue, SW., Washington, DC 20585–0121. Telephone (202) 586–4563, or *antonio.bouza@ee.doe.gov.*

Thomas B. DePriest, Esq., U.S. Department of Energy, Office of General Counsel, Mail Station GC–72, 1000 Independence Avenue, SW., Washington, DC 20585–0121. Telephone (202) 586–7432, or *thomas.depriest@hq.doe.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

A. Authority

The National Energy Conservation Policy Act of 1978, amended the Energy Policy and Conservation Act (EPCA or the Act) to add a part C to title III of EPCA, to establish an energy-conservation program for certain industrial equipment. (42 U.S.C. 6311–6317) The Energy Policy Act of 1992 (EPACT), Public Law 102–486, also amended EPCA, and included amendments that expanded title III to include small electric motors. Specifically, EPACT amended section 346 of EPCA (42 U.S.C. 6317) to provide in paragraph (b) that the Secretary of Energy must prescribe testing requirements and energy conservation standards for those small electric motors for which the Secretary determines that standards ''would be technologically feasible and economically justified, and would result in significant energy savings.'' (42 U.S.C. 6317(b)(1)).

DOE construes section 346 in light of the provisions of section 325(n) and (o) of EPCA (which are in part B of title III of EPCA and apply specifically to residential appliances). DOE does so for two reasons. First, section 346(c) specifically makes the criteria in section 325(n) applicable to the determination for small motor standards. (42 U.S.C. 6317(c)) Second, and more generally, section 345(a) makes subsections (l) through (s) of section 325 applicable to provisions of part C of title III of EPCA which includes section 346. (42 U.S.C. 6316(a)).

Section 325(n) deals with petitions for amended standards. Paragraph (n)(2) of section 325(n) provides for an initial determination by DOE of technological feasibility, economic justification, and significant energy savings in deciding whether to grant a petition. This initial determination does not focus on specific standard levels. Paragraph (n)(2) further provides that the initial determination does not create any presumption with regard to the application of these statutory criteria for promulgating specific standards in a rulemaking pursuant to DOE's decision to grant a petition. Section 325(o)(2) requires that determinations of technological feasibility, economic justification, and significant energy saving must ultimately be based on specific standards levels that were proposed for public comment. (42 U.S.C. 6295(o)(2)) The textual linkage of these provisions of section 325 to section 346(b) implies that today's determination is similar in character and legal effect to an initial determination upon a petition for new or amended standards and that it does not create any presumptions with regard to the determination of specific standard levels yet to be proposed.

In addition to this structural analysis of EPCA, DOE is also of the view that, as a matter of policy, it is impractical to proceed on any other basis. It is impractical because, even if one or more design options have the potential for achieving energy savings, a determination that such savings could in fact be achieved cannot be made without first having developed test procedures to measure the energy efficiency of small motors designs, and then conducting an in-depth analysis of each design option. Such analysis might

show that no standard meets all three of the prescribed criteria: i.e., technological feasibility, economic justification and significant energy savings.

For these reasons, the Department construes section 346(b) and related provisions as requiring it to: (1) Determine preliminarily whether standards for small motors would be ''technologically feasible and economically justified, and would result in significant energy savings,'' and (2) if energy conservation standards appear to be warranted under these criteria, prescribe test procedures and conduct a rulemaking concerning such standards. During the standards rulemaking, the Department would describe whether, and at what level(s), to promulgate energy conservation standards. This decision would be based on in-depth consideration, with public participation, of the technological feasibility, economic justification, and energy savings of potential standard levels in the context of the criteria and procedures for prescribing new or amended standards established by section 325(o) and (p) (42 U.S.C. 6295(o), (p)).

Section 340(13)(F) of EPCA (42 U.S.C. 6311(13)(F)) provides the following definition for ''small electric motor'': The term ''small electric motor'' means a NEMA [National Electrical Manufacturers Association] general-purpose alternating-current single-speed induction motor, built in a two-digit frame number series in accordance with NEMA Standards Publication MG1–1987.

In NEMA Standards Publication MG1–1987, which is entitled ''Motors and Generators,'' the two-digit frame series encompasses NEMA frame sizes 42, 48, and 56, and motors with horsepower ratings ranging from ¼ to 3 horsepower. These motors operate at 60 hertz and have either a single-phase or a three-phase electrical design.

Section 346(b)(3) of EPCA (42 U.S.C. 6317(b)(3)) specifies that a standard prescribed for small electric motors shall not apply to any small electric motor that is a component of a covered product under section 322(a) of EPCA (42 U.S.C. 6292(a)) or of covered equipment under section 340 (42 U.S.C. 6311). Such products and equipment include residential air conditioners and heat pumps, furnaces, refrigerators and freezers, clothes washers and dryers, and commercial packaged air-conditioning and heating equipment.

B. Rulemaking Procedures

EPCA does not explicitly identify the rulemaking procedures that govern promulgation of test procedures and standards for small electric motors. In conducting rulemakings generally, the Department must, at a minimum, adhere to the procedures required by the Administrative Procedure Act (5 U.S.C. 551 *et seq.*) and section 501 of the Department of Energy Organization Act (DOE Organization Act) (42 U.S.C. 7191). Section 501 of the DOE Organization Act in essence requires the following: (1) Issuance of a notice of proposed rulemaking (NOPR), (2) an opportunity for comment, (3) an opportunity for presentation of oral comments, if there exists ''a substantial issue of fact or law'' or if the rule will have a ''substantial impact,'' and (4) publication of the final rule accompanied by appropriate explanation. Pursuant to Executive Order 12889, ''Implementation of the North American Free Trade Agreement,'' December 27, 1993, the comment period on a NOPR must be at least 75 days.

Consistent with section 345(a), in promulgating test procedures for small electric motors, the Department will also use procedures prescribed for adopting test procedures under parts B and C of EPCA. (42 U.S.C. 6293(b)(2) and 6314(b)) Therefore, in addition to the generic procedural requirements described above, the Department will provide an opportunity for oral comment (i.e., hold a public meeting) on the proposed test procedures, regardless of the ''substantial issue'' or ''substantial impact'' criteria, as it does in other EPCA test procedure rulemakings. See, for example, 42 U.S.C. 6314(b).

Consistent with section 345(a), in determining by rule whether to impose a specified standard level, the Department will use the following procedures:

1. The Department will issue an advance notice of proposed rulemaking (ANOPR), followed by a comment period (42. U.S.C. 6295 (p)(1));

2. The Department will issue a NOPR setting forth the maximum efficiency improvement that is technologically feasible and, if the proposed standard does not achieve this level, an explanation of why (42 U.S.C. 6295(p)(2)); and

3. The Department will hold a public meeting following issuance of the NOPR. (42 U.S.C. 6306(a)(1).)

In addition, the Department also has a policy, in conducting rulemakings on appliance standards, of allowing 75 days for comment on an ANOPR (rather than the 60 days required by EPCA), with at least one public hearing or meeting during this period. *Procedures for Consideration of New or Revised Energy Conservation Standards for Consumer Products*, 10 CFR part 430, subpart C, Appendix A (Process Rule).

C. Background

The Department began the analysis for this determination by collecting information from manufacturers of small motors and others. The Department conducted preliminary analyses and shared its preliminary findings regarding efficiency improvement in small motors. Subsequently, the Department received data and information, including that provided by both the National Electrical Manufacturers Association (NEMA) and the Small Motors and Motion Association (SMMA) (the NEMA/SMMA Working Group).

A key issue that arose early in this determination process is the definition of a ''small electric motor'' and precisely which motors are covered by this rulemaking. The definition of a ''small electric motor'' derives from the definition of the term ''general purpose motor.'' The EPCA definition [1] of a small motor is tied to the NEMA Standards Publication MG1–1987 performance requirements that NEMA has established for general purpose motors, such as the minimum levels for breakdown and locked rotor torque for small electric motors presented in MG1–1987 paragraph 12.32.

In this determination process, the Department considered only those classes of small electric motors covered under the EPCA definition which satisfy the performance requirements for general purpose motors established by NEMA Standards Publication MG1–1987, and which are not a component of another product covered under EPCA.

In consideration of the above, DOE finds that of the motors that satisfy the frame-size requirements of the small-motors definition, only a subset satisfies the other performance requirements of

[1] EPCA does not define the term ''general purpose motor,'' although it does define the terms ''definite purpose motor'' and ''special purpose motor.'' According to EPCA, ''definite purpose motor'' means ''any motor designed in standard ratings with standard operating characteristics or standard mechanical construction for use under service conditions other than usual or for use on a particular type of application and which cannot be used in most general purpose applications.'' Section 340(13)(B). (42 U.S.C. 6311 (13)(B)) Likewise, ''special purpose motor'' means ''any motor, other than a general purpose motor or definite purpose motor, which has special operating characteristics or special mechanical construction, or both, designed for a particular application. '' Id. at (C). Consequently, DOE must derive the term ''general purpose'' by eliminating those definite purpose motors and special purpose motors and must subsequently define the term within the context of NEMA performance characteristics that can operate successfully in many different applications.

the definition. Among single-phase motors with a two-digit frame size, the Department found that only capacitor-start motors, including both capacitor-start, induction run and capacitor-start, capacitor-run motors, can meet the torque requirements for NEMA general-purpose motors. Among three-phase small motors, the Department found that only non-servo motors can meet the NEMA performance requirements for general-purpose motors. Hence, the Department's analysis covered only these types of single- and three-phase small motors, and the Department identifies them in this determination as ''considered small motors.'' The annual commercial sales volume of considered small motors is approximately four million units for capacitor-start motors and one million units for three-phase motors. These motors are used in a wide variety of commercial and industrial machine and processing applications, with the largest being pumping equipment and commercial/industrial heating, ventilating, and air-conditioning equipment rated over 760,000 British thermal units per hour (Btu/h).

The Department then conducted an analysis that estimated the likely range of energy savings and economic benefits that would result from energy conservation standards for small electric motors, and prepared a report describing its analysis. In June 2003, the Department made the report ''Analysis of Energy Conservation Standards for Small Electric Motors'' available for public comment on its Web site at *http://www.eere.energy.gov/buildings/appliance_standards/commercial/small_electric_motors.html*. The report made no recommendation concerning the determination that the Department should make.

The Department received comments concerning its analysis of small motors from NEMA, SMMA, and the American Council for an Energy-Efficient Economy (ACEEE). In general, the comments received did not criticize specific elements of the Department's technical analysis. The ACEEE comment indicated that ACEEE found the analysis to be ''technically robust.'' (ACEEE, No. 3 at p. 1) [2] However, NEMA asserted that energy conservation standards for certain small motors were not economically justified and would harm U.S. motor manufacturers, and ACEEE claimed that energy conservation standards for small motors are unlikely to save much energy and would be a diversion from exploring other energy savings approaches. (NEMA, No. 1 at p. 2; ACEEE, No. 3 at p. 2) ACEEE commented that the Department could achieve greater energy savings if it did not restrict its analysis to capacitor-start, capacitor-run and capacitor-start, induction-run single-phase motors, and three-phase motors. ACEEE commented that these categories of small motors account for only four percent of domestic shipments and that much greater energy savings could be realized by switching between different types of small motors. (ACEEE, No. 3 at p. 1) ACEEE suggested that the Department encourage users of small motors to shift between classes of motors, such as from split-phase and shaded-pole motors to capacitor-start, capacitor-run and capacitor-start, induction-run motors; it commented that the substitution would yield greater savings than improvements that are restricted to the category of capacitor-start, induction-run motors. Further, ACEEE suggested replacing considered small motors with advanced types, such as electronically commutated permanent magnet motors. (ACEEE, No. 3 at p. 1) While the Department understands ACEEE's concern, the market transformation that ACEEE suggests is outside the scope of this determination since the purpose of energy conservation standards is to increase the energy performance of regulated products rather than change the product-purchase-and-use behavior of consumers.

The SMMA generally supported the findings of the NEMA/SMMA Working Group. (SMMA, No. 2 at p. 1) The main findings of the NEMA/SMMA Working Group pertained to the cost-efficiency relationship for small motors, and these findings were incorporated into the Department's engineering analysis for this determination.

NEMA commented that many small motors are used in other equipment that is subject to Federal energy conservation standards, and that small motors in those product applications are not within the scope of the Department's analysis and proceeding. (NEMA, No. 1 at p. 1) The Department agrees with NEMA, insofar as the EPCA definition of small motors and exclusions constrain the motors considered in the Department's analysis to a subset of the total population of small electric motors. As stated above, pursuant to section 346(b)(3) of EPCA (42 U.S.C. 6317(b)(3)), the Department did not consider in its analysis motors that are a component of a covered product or equipment.

In a related comment, NEMA requested that the Department designate small motors as ''covered equipment,'' which it asserted was done for general-service incandescent lamps although there was no standard for such lamps, and cited 59 FR 49468 (September 28, 1994). NEMA requested the designation so that States that are attempting to set efficiency standards for small motors would be preempted by the Federal action. (NEMA, No. 1 at p. 1) Section 345(a) of EPCA (42 U.S.C. 6316(a)) provides in part that section 327 of the Act (42 U.S.C. 6297), which addresses preemption of State energy conversation requirements by EPCA, shall apply to various equipment covered by part C of title III of EPCA, which includes small electric motors. Thus, State energy use and efficiency requirements for ''small electric motors,'' as defined in 42 U.S.C. 6311(13)(F), are already preempted to the extent provided in section 327 of EPCA (42 U.S.C. 6297). No further action by DOE is needed to provide for such preemption. Small motors that are not within EPCA's definition of small motors are not covered by EPCA; therefore, the Act does not preempt State energy use and efficiency requirements with respect to motors not covered by EPCA.

II. Discussion of the Analysis of Small Motors

A. Purpose and Content

The Department performed an analysis of the feasibility of achieving significant energy savings as a result of energy conservation standards for considered small electric motors. The Department presents the results of this analysis in a technical support document (TSD) for this determination. In subsequent analyses for the standards ANOPR, NOPR, and final rule, DOE will perform the more robust analyses required by EPCA. These analyses will involve more precise and detailed information that the Department will develop and receive during the standards rulemaking process, and will detail the effects of proposed energy conservation standards for small electric motors.

B. Methodology

To address EPCA requirements that DOE determine whether energy conservation standards for small motors would be technologically feasible and economically justified, and result in significant energy savings (42 U.S.C. 6317(b)(1)), the Department's analysis

[2] A notation in the form ''ACEEE, No. 3 at p. 1'' identifies a written comment the Department has received and has included in the docket of this rulemaking. This particular notation refers to a comment (1) by the American Council for an Energy-Efficient Economy (ACEEE), (2) in document number 3 in the docket of this rulemaking (maintained in the Resource Room of the Building Technologies Program), and (3) appearing on page 1 of document number 3.

consisted of five major elements: (1) Market research to better understand where and how small motors are used, (2) engineering analysis to estimate how different design options affect efficiency and cost, (3) life-cycle cost (LCC) analysis to estimate the costs and benefits to users from increased efficiency in small motors, (4) national energy savings analysis to estimate the potential energy savings on a national scale, and (5) national consumer impacts analysis to estimate potential economic costs and benefits that would result from improving energy efficiency in the considered small motors. The following is a brief description of each element.

1. Market Research

The Department conducted research on the market for considered small motors, including annual shipments, the current range of energy efficiencies, motor applications and utilization, market structure, and distribution channels. It used information from original equipment manufacturers (OEMs), trade associations that support industrial sectors, consultation with small motor manufacturers, and independent experts. Also, NEMA provided data, on its own initiative, to the Department on sales of two-digit-frame small motors to domestic customers by its member manufacturers, covering the period from 1971 to 2001. Based on its market research, the Department estimated that, on average, capacitor-start and three-phase small motors are used 2,500 hours annually at a loading of 70 percent of rating.

Based on its market research, including input from OEMs that incorporate small motors into their products and the NEMA/SMMA Working Group, the Department used seven years as the mean lifetime for capacitor-start motors, and nine years for three-phase motors.

Also based on its market research, the Department determined that the small motors considered in this determination are used in commercial and industrial settings with the corresponding tariffs. The Department estimated that approximately three-fourths of capacitor-start motors are used by utility customers on a commercial tariff, while virtually all users of small, three-phase motors are on an industrial tariff. Industrial electricity prices tend to be lower than commercial prices.

2. Engineering Analysis

In the engineering analysis, the Department examined methods for increasing energy efficiency that included increasing the amount of active material (e.g., the diameter of wire conductors), substituting a higher grade of steel for the magnetic components, improving the mechanical components and design (winding, bearings, and fan), and improving the quality control of components and assembly. Manufacturers of small motors use all of these methods of motor-efficiency improvement in their design and production processes. In general, the Department found that these methods may increase either the motor cost or size if there are no other changes in the motor-design parameters. In particular, the Department evaluated several ways to achieve increased efficiency, including (1) changing the quality of the grade of electrical steel, (2) changing the quantity of electrical steel (stack length), and (3) changing the magnetic flux density by adjusting the effective turns in the copper windings and/or changing the thickness of the steel laminations in the core of a small motor. In its preliminary engineering evaluation, the Department found the efficiency improvement method of changing flux density to be the most expensive of the three methods. As a result, the Department analyzed only the two lower-cost efficiency improvement methods to help maintain the simplicity and clarity of its analysis.

In particular, the Department examined a one-half-horsepower, capacitor-start, induction-run motor and a one-horsepower, three-phase motor as prototypes for improving the energy efficiency of small motors. To estimate the efficiency changes and additional costs resulting from design changes, the Department used two sets of data. The Department derived the first set by engaging an independent motor industry expert to estimate motor-efficiency costs from motor test data and design cost estimates. The expert obtained motor test data for a sample of small motors using a traditional motor performance program based on equivalent-circuit analysis to calculate efficiency changes resulting from changes in steel grades and stack lengths. This methodology was similar to methods commonly used by motor manufacturers. The NEMA/SMMA Working Group provided, on its own initiative, a comparable set of data in an aggregated form.

The Department had a concern that the cost-efficiency curves presented in the June 2003 report ''Analysis of Energy Conservation Standards for Small Electric Motors'' were based on 2001 materials pricing data, which represented a relative low-price point for many electrical steels (i.e., the steel used for building electric motor rotors and stators). The price of electrical steels has increased since 2001. However, the slope of the engineering analysis cost-efficiency curves depends on the price difference between the baseline unit (i.e., low efficiency steel) and the higher efficiency unit (i.e., better grade steel). Electrical steel price data collected in 2005 for the distribution transformer standards rulemaking along with a check of 2001 and 2005 pricing for specific steels used in small motors verified that the price differential between the baseline and high-efficiency steels did not increase between 2001 and 2005. For this reason, the Department determined that it was not necessary to update the material prices for the engineering analysis, because updating the material prices, or calculating average material prices representative of a multi-year period, would not significantly change the Department's engineering results.

3. Life-Cycle Cost Analysis

Based on its engineering analysis of the available technical data, the Department conducted a life-cycle cost (LCC) analysis to estimate the net benefit to users from increased efficiency in capacitor-start and three-phase small motors. The LCC analysis compared the additional up-front cost of a higher-efficiency motor to the discounted value of electricity savings over the life of the motor. The Department's LCC analysis used the following inputs: estimated average motor use in terms of hours and loading and typical motor lifetime (discussed above), estimated average prices for base motors and more-efficient motors, average electricity prices paid by users of capacitor-start and three-phase small motors, and the discount rate.

The Department received significant comment regarding its estimates of motor lifetimes. The Department understands that the typical lifetime of a small motor is not well documented. Most industry experts with whom the Department consulted suggested the average life for considered motors is at most ten years, depending on the use and physical environment. The NEMA/SMMA Working Group estimated an average life of five years for a capacitor-start motor and ten years for a three-phase motor. In view of these considerations, the Department estimated the mean lifetime for a capacitor-start motor at seven years and a three-phase motor at nine years. Moreover, the Department believes that the potential lifetime of a considered motor may be greater than that of the driven equipment. Thus, the actual motor lifetime may be limited by the

lifetime of the equipment it drives. In view of this issue, NEMA commented that the economic justification of energy conservation standards for the user was not good. Where simple payback periods range from 4.9 to 9 years, NEMA questioned whether the equipment driven by the small motor will last that long and, thus, enable the payback for the higher cost of improved efficiency to be realized. (NEMA, No. 1 at p. 2).

The Department acknowledges that a small motor's lifetime could be limited by the life of the equipment it drives. The Department used a distribution of lifetimes for small electric motors in its analysis. For capacitor-start motors, the analysis used the range of 5 to 9 years for the lifetime, and for polyphase motors the Department used a range of 7 to 11 years. Given existing data and the balance of diverse stakeholder and expert comments, the Department considers its current lifetime estimates to be reasonable and accurate for this determination analysis.

The Department estimated the base purchase price of typical capacitor-start and three-phase small motors using (1) prices listed in the 2001–2002 W.W. Grainger, Inc., catalog, (2) estimates of the percentage of the list price paid in different motor distribution channels, and (3) estimates of the distribution of sales among the three channels (motor manufacturer to OEM, motor manufacturer to distributor to original equipment manufacturer, and motor manufacturer to distributor to end user). The Department derived the price for a motor that incorporated design changes to improve efficiency by applying the estimated percentage of incremental cost from the engineering analysis to the average base price of the motor estimated from the Grainger, Inc., catalog.

The Department estimated average commercial and industrial electricity prices using the 2010 and 2020 forecasts from the Energy Information Administration's (EIA) *Annual Energy Outlook 2006.* It then derived average prices paid by users of capacitor-start and three-phase small motors based on the tariff classes of users (discussed above). Given that relatively small industrial establishments use considered small, polyphase (i.e., three-phase) motors more than larger establishments, and that small industrial establishments have higher electricity tariffs than larger industry, the Department estimated the electricity price for polyphase motors as five percent higher than the national average industrial price of electricity.

The Department derived a discount rate based on the weighted-average cost of capital for representative companies using products containing the considered small motors. After deducting for expected inflation, the Department estimated the average cost of capital for considered small motor owners as 7.5 percent.

4. National Energy Savings Analysis

To estimate national energy savings for small motors sold from 2010 through 2030, the Department calculated the energy consumption of two typical sizes of small motors: One-half horsepower, capacitor-start, induction-run motors, and one-horsepower, three-phase motors. The Department used both its own data and the NEMA/SMMA Working Group data for capacitor-start, induction-run motors. However, it used only its own data for three-phase motors because the NEMA/SMMA Working Group based its analysis on a one-half horsepower motor, which is less common than the one-horsepower motor, and which therefore has losses that may not be representative of considered small, three-phase motors. The Department calculated the energy efficiencies of small motors with improved-steel-grade and increased-stack-length design options, and extrapolated the results to a national average for all new capacitor-start, induction-run and three-phase motors (constituting the energy conservation standards cases).

The Department estimated the energy savings of the standards cases relative to two base cases—little improvement and moderate improvement in efficiency—in the absence of any standards. The Department formulated each base case using information from historical trends, and input from the NEMA/SMMA Working Group, provided on its own initiative. The Department also evaluated two small-motors-shipments scenarios, estimating national energy savings for average annual growth in shipments of 1 percent and 1.5 percent. These shipments scenarios are also based upon historical trends and input from the NEMA/SMMA Working Group.

To estimate potential energy savings from a possible energy conservation standard, the Department used an accounting model that calculated total end-use electricity savings in each year of a 35-year forecast. The model featured a product-retirement function to calculate the number of units sold in a given year, or vintage, which would still be in operation in future years. Some of the small motors sold in 2030 will operate through 2040. The retirement function assumed that individual motor lifetime is evenly distributed in a five-year interval around the mean lifetime.

The Department calculated primary energy savings associated with end-use electricity savings using data from EIA's *Annual Energy Outlook* 2006 (AEO). These data provided an average multiplier for relating end-use electricity to primary energy use (energy consumption by the power plant) for each year from 2010 to 2020. The Department extrapolated the trend in these years to derive factors for 2021 to 2040.

5. National Consumer Impacts Analysis

The Department estimated national economic impacts on end users in terms of the net present value (NPV) of cumulative benefits from 2010 to 2040. It considered these impacts under the same range of scenarios as it did for estimating national energy savings. It used the incremental equipment costs and energy savings for each energy-efficiency level that it applied in the LCC analysis. To simplify the analysis, the Department estimated the value of energy savings using the average AEO forecast electricity price from 2010 to 2020. The Department discounted future costs and benefits by using a seven-percent discount rate, according to the ''Guidelines and Discount Rates for Benefit Analysis of Federal Programs,'' issued by the Office of Management and Budget in 1992 (Circular No. A–94, Revised).

C. Analysis Results

1. Engineering Analysis

As described above, the Department conducted separate analyses of changes in the grade of electrical steel and a change in the stack length to improve the energy efficiency of small motors. In each case, the Department gave the base motor a ''per-unit'' cost of one. The Department related all design-option changes to the base motor per-unit cost of one. For example, if a change in electrical steel created a 10 percent change in the cost of materials, such as electrical steel, the Department assigned the per-unit number of 1.10 for the new design. In addition, the NEMA/SMMA Working Group provided, on its own initiative, comparable data, where each of four manufacturers selected a typical small motor to use as the base motor. For steel-grade design options, the NEMA data refer to the average values of the four manufacturers. For stack-change design options, the NEMA/SMMA Working Group provided data that it considered most typical. Tables 1 and 2 summarize the results of the analysis of steel-grade and stack-length

changes. For capacitor-start motors, the Department analyzed the cost of efficiency improvements for both 56-frame and 48-frame motors. These two frames represent distinct frame sizes that are common for one-half horsepower motors.

Overall, the Department's analysis and the NEMA/SMMA Working Group data were more comparable for the stack-change design options than they were for the design options related to steel-grade changes. The NEMA/SMMA Working Group estimated a much smaller efficiency improvement due to steel grade improvements than the Department's analysis.

TABLE 1.—CAPACITOR-START MOTORS, ½ HORSEPOWER, 4-POLE, OPEN DRIP-PROOF

	Grade A	Grade B	Grade B+	M47
Steel-Grade Design Options				
DOE Analysis, 56-Frame:				
Per-unit Cost	1.00	1.03	1.08	1.25
Efficiency	53.9%	57.4%	59.3%	60.5%
DOE analysis, 48-Frame:				
Per-unit Cost	1.00	1.03	1.10	1.25
Efficiency	62.6%	65.4%	66.8%	69.0%
		Grade 1	Grade 2	Grade 3
NEMA/SMMA data:				
Per-unit Cost		1.00	1.10	1.21
Efficiency		60.0%	61.7%	62.9%
	Base	Plus stack	Plus 2 stack	Plus 3 stack
Stack-Change Design Options				
DOE analysis, 56-Frame:				
Per-unit Cost	1.00	1.09	1.19	1.29
Efficiency	53.9%	58.1%	60.3%	62.0%
DOE analysis, 48-Frame:.				
Per-unit Cost	1.00	1.07	1.15	1.22
Efficiency	62.6%	63.5%	64.4%	65.1%
NEMA/SMMA data:				
Per-unit Cost	1.00	1.10	1.20	1.30
Efficiency	62.0%	64.3%	65.5%	66.5%

TABLE 2.—POLYPHASE MOTORS, 4-POLE, OPEN DRIP-PROOF

	Grade A+	Grade B+	M47
Steel-Grade Design Options			
DOE analysis, 1 horsepower:			
Per-unit Cost	1.0	1.04	1.20
Efficiency	76.4%	78.3%	81.2%
	Grade 1	Grade 2	Grade 3
NEMA/SMMA data, ½ horsepower:			
Per-unit Cost	1.00	1.10	1.20
Efficiency	68.1%	70.7%	72.1%
	Base	Plus stack	Plus 2 stack	Plus 3 stack
Stack-Change Design Options				
DOE analysis, 1 horsepower:				
Per-unit Cost	1.00	1.06	1.18	1.24
Efficiency	76.4%	77.2%	78.9%	79.2%
NEMA/SMMA analysis, ½ horsepower:				
Per-unit Cost	1.00	1.08	1.16	1.24
Efficiency	72.2%	73.1%	73.9%	74.1%

As stated above, the Department received no comments criticizing specific elements of its technical analysis. NEMA agreed with the Department's conclusions that it is technically feasible to increase the efficiency of small motors in frame sizes 42, 48, and 56 for three-phase and single-phase motors, and that improving grades of steel and redesigning laminations will provide increased efficiency, but at much higher capital costs. (NEMA, No. 1 at p. 2) ACEEE found the Department's analysis to be ''technically robust.'' (ACEEE, No. 3 at p. 1).

NEMA commented that manufacturer costs and impacts from a possible

standard may be high. It asserted that there will be high capital costs and, presumably, less economic benefit to the manufacturer than the Department described in its June 2003 determination report ''Analysis of Energy Conservation Standards for Small Electric Motors.'' (NEMA, No. 1 at p. 2) While the economic impacts of a possible standard on manufacturers may be substantial, DOE did not evaluate the full impact of possible standards on manufacturers in this determination. The Department instead used the presence of high-efficiency designs in the marketplace as an indicator of the probable economic feasibility of manufacturing high efficiency designs. The Department will address detailed economic impacts on manufacturers at such time that it conducts a manufacturer impact analysis for an energy efficiency standards rulemaking.

In addition, NEMA commented that there was a strong likelihood that OEMs will switch to alternative small motors that are not covered to avoid any added costs resulting from energy conservation standards. (NEMA, No. 1 at p. 2) The Department believes that shifting from, for example, a capacitor-start, induction-run small motor to a less efficient shaded-pole or split-phase small motor design would reduce potential energy savings. However, the Department understands that small motors are not generally interchangeable. Physical constraints in some current equipment designs may preclude the substitution of another type of motor for a considered small motor. Lacking clear evidence or data regarding the change in sales of considered small motors due to possible standards, the Department did not model this potential phenomenon in the determination analysis. (As explained below, the Department intends to undertake a rulemaking to develop standards for small motors. If it appears to DOE in the initial phases of the rulemaking that the potential for motor switching warrants further examination, the Department will address that issue in its analyses during the rulemaking.)

2. Life-Cycle Cost and Payback Period Analysis

The Department presents key results for capacitor-start motors in Tables 3 and 4 below. Using the DOE data for capacitor-start motors, the steel-grade options all have lower LCC than the base motor. However, results using the NEMA/SMMA average data show an increase in LCC at steel grade 3, with no change in LCC at steel grade 2. The DOE analysis shows the stack-length options increasing the LCC, while the NEMA/SMMA results show a slight decrease for the first option, but then an increase in LCC for the higher-efficiency stack change options.

TABLE 3.—IMPACTS OF EFFICIENCY IMPROVEMENT ON TYPICAL END USER, CAPACITOR-START, ½ HORSEPOWER, DOE DATA*

	Steel grade				Stack change		
	Grade A (base)	Grade B	Grade B+	M47	Plus stack	Plus 2 stack	Plus 3 stack
Motor Price-Buyer**	$103	$106	$114	$129	$111	$119	$126
Annual Operating Cost	$75	$72	$70	$68	$74	$73	$72
Life-Cycle Cost (7.5% DR)	$501	$487	$486	$490	$502	$505	$508
Change in LCC (WRT Base)		−$14.07	−$14.47	−$11.37	$1.51	$4.05	$7.47
Percent Change in LCC		−2.8%	−2.9%	−2.3%	0.3%	0.8%	1.5%
Payback Period (years)		1.0	2.2	3.7	6.7	7.2	7.9

* Data refer to a specific typical motor.
** Based on actual motor price in Grainger catalog.

TABLE 4.—IMPACTS OF EFFICIENCY IMPROVEMENT ON TYPICAL END USER, CAPACITOR-START, ½ HORSEPOWER, NEMA/SMMA DATA

	Steel grade*			Stack change**			
	Grade 1 (base)	Grade 2	Grade 3	Base	Plus stack	Plus 2 stack	Plus 3 stack
Motor Price-Buyer***	$117	$128	$141	$117	$128	$140	$152
Annual Operating Cost	$78	$76	$75	$76	$73	$72	$71
Life-Cycle Cost (7.5% DR)	$532	$532	$537	$518	$516	$520	$526
Change in LCC (WRT Base)		−$0.01	$5.20		−$2.63	$1.41	$7.36
Percent Change in LCC		0.0%	1.0%		−0.5%	0.3%	1.4%
Payback Period (years)		5.3	6.7		4.3	5.6	6.7

* Data are average of four manufacturers.
** Data reflect costs and performance of a typical motor.
*** Estimated by DOE based on Grainger catalog prices.

Tables 5 and 6 present results for small, polyphase motors. Although the base motors are different in the DOE and NEMA/SMMA data sets, it is the relative change for each motor that is of most interest. Using the DOE data, the steel-grade options both have lower LCC than the base motor. However, results based on the NEMA/SMMA average data show an increase in LCC at steel grade 3, with the LCC at steel grade 2 being equivalent to that for the base motor. Using the DOE data, the stack-length options moderately increase the LCC relative to the base motor, while the increase in LCC is more pronounced in the results based on the NEMA/SMMA data.

TABLE 5.—IMPACTS OF EFFICIENCY IMPROVEMENT ON TYPICAL END USER, POLYPHASE 1 HORSEPOWER, DOE DATA*

	Steel grade			Stack change		
	Grade A (base)	Grade B+	M47	Plus stack	Plus 2 stack	Plus 3 Stack
Motor Price-Buyer**	$119	$124	$143	$126	$140	$148
Annual Operating Cost	$98	$96	$93	$97	$95	$95
Life-Cycle Cost (7.5% DR)	$746	$736	$733	$747	$748	$752
Change in LCC (WRT Base)		−$10.49	−$12.98	$0.86	$1.69	$6.14
Percent Change in LCC		−1.4%	−1.7%	0.1%	0.2%	0.8%
Payback Period (years)		2.0	4.1	7.3	6.9	8.1

* Data refer to a specific typical motor.
** Based on actual motor price in Grainger catalog.

TABLE 6.—IMPACTS OF EFFICIENCY IMPROVEMENT ON TYPICAL END USER, POLYPHASE ½ HORSEPOWER, NEMA/SMMA DATA

	Steel grade*			Stack change**			
	Grade 1 (base)	Grade 2	Grade 3	Base	Plus stack	Plus 2 stack	Plus 3 stack
Motor Price-Buyer***	$125	$138	$151	$126	$136	$146	$156
Annual Operating Cost	53.9	$51.9	$50.9	$50.8	$50.2	$49.7	$49.5
Life-Cycle Cost (7.5% DR)	469	$469	$475	$450	$456	$463	$472
Change in LCC (WRT Base)		−$0.02	$6.02		$6.48	$12.96	$22.14
Percent Change in LCC		0.0%	1.3%		1.4%	2.9%	4.9%
Payback Period (years)		6.4	8.4		17.9	17.9	23.9

* Data are average of four manufacturers.
** Data reflect costs and performance of a typical motor.
*** Estimated by DOE based on Grainger catalog prices.

3. National Energy Savings and Consumer Impacts

The Department estimated national energy savings and consumer impacts of energy conservation standards for the considered small motors using its own engineering analysis data and the NEMA/SMMA Working Group data. The Department assumed that energy conservation standards would take effect in 2010, and estimated cumulative energy savings and NPV impacts relative to alternative base cases.

The results using the Department's analysis of design options indicate cumulative energy savings for capacitor-start, induction run-small motors ranging from 0.47 to 0.59 quad (see table 7). The corresponding NPV ranges from $0.28 to $0.35 billion. The results based on the data provided by the NEMA/SMMA Working Group, on its own initiative, show lower energy savings and economic benefits.

The results using the Department's analysis of design options for three-phase small motors indicate cumulative energy savings from 0.14 to 0.19 quad (see table 8). The corresponding NPV ranges from $0.08 to $0.11 billion. For the three-phase motors, the Department did not estimate national impacts using the data provided by the NEMA/SMMA Working Group, on its own initiative, because these data were based on a one-half horsepower motor instead of the more typical one-half horsepower size. The NEMA/SMMA data for half-horsepower motors show some efficiency gains, but with an increase in LCC, which would lead to a negative NPV.

TABLE 7.—CUMULATIVE ENERGY AND CONSUMER IMPACTS OF ENERGY EFFICIENCY IMPROVEMENT FOR ½ HORSEPOWER CAPACITOR START-INDUCTION-RUN MOTORS PROJECTED TO BE SOLD IN THE 2010–2030 PERIOD*

Future scenario	Energy savings (quads)		NPV (year 2005 dollars in billions, discounted at 7 percent to 2005)	
	DOE	NEMA/SMMA	DOE	NEMA/ SMMA
Low-efficiency-gain base case, low shipments growth	0.54	0.19	0.33	0.04
Low-efficiency-gain base case, high shipments growth	0.59	0.21	0.35	0.04
Moderate-efficiency-gain base case, low shipments growth	0.47	0.12	0.28	−0.05
Moderate-efficiency-gain base case, high shipments growth	0.51	0.12	0.30	−0.05

* The values given for each scenario correspond to the design option with the combination of highest energy savings and most favorable consumer NPV.

TABLE 8.—CUMULATIVE ENERGY AND CONSUMER IMPACTS OF ENERGY EFFICIENCY IMPROVEMENT FOR ONE-HORSEPOWER THREE-PHASE MOTORS PROJECTED TO BE SOLD IN THE 2010–2030 PERIOD *

Future scenario	Energy savings (quads)		NPV (year 2005 dollars in billions, discounted at 7 percent to 2005)	
	DOE	NEMA/ SMMA	DOE	NEMA/ SMMA
Low-efficiency-gain base case, low shipments growth	0.17	(1)	0.10	(1)
Low-efficiency-gain base case, high shipments growth	0.19	(1)	0.11	(1)
Moderate-efficiency-gain base case, low shipments growth	0.14	(1)	0.08	(1)
Moderate-efficiency-gain base case, high shipments growth	0.15	(1)	0.09	1

* The values given for each scenario correspond to the design option with the combination of highest energy savings and most favorable consumer NPV.
[1] Not available.

The differences between the results using the Department's analysis of design options and those using the data that the NEMA/SMMA Working Group provided on its own initiative reflect differences in estimates of the efficiency and cost increases associated with different design options.

D. Discussion

1. Significance of Energy Savings

Section 346(b)(1) of EPCA (42 U.S.C. 6317(b)(1)) mandates the Department to determine whether energy conservation standards for small motors would result in ''significant energy savings.'' NEMA commented that energy conservation standards for the considered small motors are not likely to save the threshold amount of one quad. (NEMA, No. 1 at p. 1) While the term ''significant'' is not defined in the Act, the U.S. Court of Appeals, in *Natural Resources Defense Council* v. *Herrington*, 768 F.2d 1355, 1373 (D.C. Cir. 1985), indicated that Congress intended ''significant'' energy savings in a similar context in section 325 of the Act (42 U.S.C. 6295(o)(3)(B)) to be savings that were not ''genuinely trivial.'' Using the Department's analysis of design options, the estimated energy savings of 0.61 to 0.78 quad over a 20-year period for the considered small motors are comparable to those the Department found to be significant for room air conditioners, where energy savings projected to result from standards ranged from 0.36 to 0.96 quad over a 30-year period. 62 FR 50122, 50142 (September 24, 1997). The Department believes that the estimated energy savings for the considered small motors are not ''genuinely trivial,'' and are, in fact, ''significant.''

2. Impact on Consumers

Section 346(b)(1) of EPCA requires that energy conservation standards for small motors be economically justified (42 U.S.C. 6317(b)(1)). Using the methods and data described in section II.B., the Department conducted an LCC analysis to estimate the net benefits to users from increased efficiency in the considered small motors. The Department then aggregated the results from the LCC analysis to the national level to estimate national energy savings and national economic impacts. Given the results on energy savings and economic benefits, the Department concluded that there is also likely to be reduced emissions from decreased electricity generation, decreased demand for the construction of electricity power plants, and potentially net indirect employment benefits from shifting expenditures from the capital-intensive utility sector to consumer expenditures. While the Department did not quantify these potential benefits, it concluded that the benefits are likely to be positive based on the results of the Department's analyses regarding energy conservation standards for similar products. The Department will provide detailed estimates of such impacts as part of the standards rulemaking process that will result from this determination.

III. Conclusion

A. Determination

Based on its analysis of the information now available, the Department has determined that energy conservation standards for certain small electric motors appear to be technologically feasible and economically justified, and are likely to result in significant energy savings. Consequently, the Department will initiate the development of energy-efficiency test procedures and standards for certain small electric motors.

All design options addressed in today's determination notice are technologically feasible. The Department's data, and data submitted by manufacturers, on their own initiative, show that the considered technologies are available to all manufacturers. These technologies include increased use of higher-grade steel, and greater amounts of electrical steel. The machinery and tools used to produce more-energy-efficient small motors are generally available to manufacturers.

The scenarios examined in the Department's analysis show that there is potential for significant energy savings. The combined savings for capacitor-start and polyphase motors range from 0.61 to 0.78 quad using DOE's data. They are lower using the NEMA/SMMA data.

For the considered capacitor-start, induction-run motors and using the DOE engineering data, all of the scenarios evaluated would result in economic benefits to the Nation as shown by the positive NPV. For the same motors, using the NEMA/SMMA data, three of the four scenarios evaluated have positive NPV. For the considered three-phase motors and using the DOE engineering data, all of the scenarios evaluated have positive NPV for at least one design option (national NPV was not calculated for three-phase motors based upon the NEMA/SMMA engineering data, because the data provided were for an unrepresentative size). While it is still uncertain whether further analyses will confirm these findings, the Department believes that standards for considered small motors appear economically justified based on balanced consideration of the information and analysis available to the Department at this time.

The Department has not produced detailed estimates of the potential adverse impacts of a national standard on manufacturers or on individual categories of users. The Department is instead relying on the presence of high-efficiency designs in the market place today as an indicator of the probable economic feasibility for manufacturers to exclusively produce high-efficiency designs if required by standards. During

the course of the standards rulemaking process, the Department will perform a detailed analysis of the impact of possible standards on manufacturers, as well as a more disaggregated assessment of their possible impacts on user-subgroups.

B. Future Proceedings

The Department will begin, therefore, the process of establishing testing requirements for small electric motors, which it expects will result in the publication of a proposed rule. During the rulemaking process, the Department will consider the Institute of Electrical and Electronics Engineers (IEEE) Standard 114–2001, *Test Procedures for Single-Phase Induction Motors.*

The Department also will begin a proceeding to consider establishment of energy conservation standards for small electric motors. Throughout the rulemaking process, the Department intends to adhere to the provisions of the Process Rule, where applicable. During the standards rulemaking, the Department will review and analyze the likely effects of industry-wide voluntary programs, such as ENERGY STAR and NEMA Premium®. In addition, any efforts by NEMA and SMMA to strengthen their efforts to promote voluntary standards for small motors will be considered. The Department will collect additional information about design options, inputs to the engineering and LCC analyses, and potential impacts on the manufacturers and consumers of small motors. During the standards rulemaking process, the Department will evaluate whether standards are technologically feasible and economically justified, and are likely to result in significant energy savings in accordance with the requirements of EPCA. (42 U.S.C. 6295(o)) If further analyses reveal that standards are not warranted, DOE will revise this determination and will not proceed to promulgate standards.

Issued in Washington, DC, on June 27, 2006.

Alexander A. Karsner,

Assistant Secretary, Energy Efficiency and Renewable Energy.

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DEPARTMENT OF COMMERCE

Patent and Trademark Office

37 CFR Part 1

[Docket No.: PTO–P–2005–0024]

RIN 0651–AB95

Changes To Information Disclosure Statement Requirements and Other Related Matters

AGENCY: United States Patent and Trademark Office, Commerce.

ACTION: Notice of proposed rulemaking.

SUMMARY: The United States Patent and Trademark Office (Office) is proposing changes to information disclosure statement (IDS) requirements and other related matters to improve the quality and efficiency of the examination process. The proposed changes will enable the examiner to focus on the relevant portions of submitted information at the very beginning of the examination process, give higher quality first actions, and minimize wasted steps. The Office is proposing the following changes relating to submissions of IDSs by applicants/patent owners: Before a first Office action on the merits, require additional disclosure for English language documents over twenty-five pages, for any foreign language documents, or if more than twenty documents are submitted, but documents submitted in reply to a requirement for information or resulting from a foreign search or examination report would not count towards the twenty document limit; permit the filing of an IDS after a first Office action on the merits only if certain additional disclosure requirements have been met; and eliminate the fees for submitting an IDS. Updates to the additional disclosure requirements would be required as needed for every substantive amendment. The Office is also proposing to revise the protest rule to better set forth options that applicants have for dealing with unsolicited information received from third parties.

DATES: To be ensured of consideration, written comments must be received on or before September 8, 2006. No public hearing will be held.

ADDRESSES: Comments should be sent by electronic mail over the Internet addressed to: *AB95.comments@uspto.gov*. Comments may also be submitted by mail addressed to: Mail Stop Comments-Patents, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313–1450; or by facsimile to (571) 273–7707, marked to the attention of Hiram H. Bernstein. Although comments may be submitted by mail or facsimile, the Office prefers to receive comments via the Internet.

Comments may also be sent by electronic mail message over the Internet via the Federal eRulemaking Portal. See the Federal eRulemaking Portal Web site (*http://www.regulations.gov*) for additional instructions on providing comments via the Federal eRulemaking Portal.

The comments will be available for public inspection at the Office of Patent Legal Administration, Office of the Deputy Commissioner for Patent Examination Policy, currently located at Room 7D74 of Madison West, 600 Dulany Street, Alexandria, Virginia, and will be available through anonymous file transfer protocol (ftp) via the Internet (address: *http://www.uspto.gov*). Because comments will be made available for public inspection, information that is not desired to be made public, such as an address or phone number, should not be included in the comments.

FOR FURTHER INFORMATION CONTACT: Hiram H. Bernstein ((571) 272–7707), Senior Legal Advisor, Office of Patent Legal Administration, Office of the Deputy Commissioner for Patent Examination Policy; or Robert J. Spar ((571) 272–7700), Director of the Office of Patent Legal Administration, Office of the Deputy Commissioner for Patent Examination Policy, directly by phone, or by facsimile to (571) 273–7707, or by mail addressed to: Mail Stop Comments-Patents, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313–1450.

SUPPLEMENTARY INFORMATION: The Office is proposing changes to the rules of practice in title 37 of the Code of Federal Regulations (CFR) to revise IDS practice. The Office is specifically proposing changes to §§ 1.17, 1.48, 1.55, 1.56, 1.97, 1.98, 1.99 1.291, 1.312, 1.555, and 1.948.

The Office will post a copy of this notice on its Internet Web site (*http://www.uspto.gov*). Additionally, individuals or organizations that need a copy for the purpose of providing comments, may send a request by phone or e-mail to Terry Dey at ((571) 272–7730 or *terry.dey@uspto.gov*) to receive an e-mail copy of the notice. When making a request for an e-mail copy, it is requested that persons please specify whether they wish to receive the document in MS-Word, WordPerfect, or HTML format.

The following definitions are intended to facilitate an understanding of the discussion of the proposed rules.

The words ''information,'' ''citation'' and ''document'' are used to describe any item of information listed in an IDS. Unless otherwise indicated, the term ''applicant'' is intended to cover the ''patent owner'' in regard to submissions of IDSs in *ex parte* or *inter partes* reexaminations. The words ''§ 1.56(c) individual'' are intended to cover all parties identified in § 1.56(c).

Background and Rationale: Persons associated with a patent application have a duty to disclose certain information to the Office. This duty was codified as § 1.56 in 1977. Pursuant to § 1.56(a), each individual associated with the filing and prosecution of a patent application must disclose to the Office ''all information known to that individual to be material to patentability.'' It must be emphasized that there is no duty to disclose information to the Office if the information is not material. As a companion to § 1.56, §§ 1.97 and 1.98 were added to provide ''a mechanism by which patent applicants may comply with the duty of disclosure provided in § 1.56.'' *See Manual of Patent Examining Procedure* § 609 (8th ed. 2001) (Rev. 3, August 2005) (MPEP).

Although § 1.56 clearly imposes a duty to disclose material information, that rule neither authorizes nor requires anyone to file unreviewed or irrelevant documents with the Office. Such documents add little to the effectiveness of the examination process and, most likely, negatively impact the quality of the resulting Office determinations.

One goal of the changes proposed in this notice is to enable an examiner to identify the most relevant prior art in an efficient and expeditious manner, even when an IDS containing a large number of documents is submitted. The changes proposed in this notice accomplish this by requiring in certain circumstances additional disclosure about documents cited in an IDS. Applicants and their representatives are reminded that the presentation of an IDS, like any other paper filed in the Office, is subject to the provisions of § 10.18. The reasonable inquiry mandated by §§ 10.18(b)(2) and 10.18(b)(2)(i) requires that information in an IDS be reviewed to assure its submission does not cause unnecessary delay or needlessly increase the cost of examination. Failure to review can also implicate obligations of registered practitioners under §§ 10.23(b) and (c), and § 10.77(b). Likewise, when an IDS includes several documents of marginal relevance, combined with other evidence suggesting that the marginally relevant information was submitted with the intent to obscure material information, this may run afoul of the duty of candor and good faith set forth in § 1.56(a). In such circumstance, an inference that the applicant or their representative attempted to cover up or conceal a material reference could be drawn. See § 10.18(b); *and see Molins PLC* v. *Textron, Inc.*, 48 F.3d 1172, 1184, 33 USPQ2nd 1823, 1831 (Fed. Cir. 1995) (''burying a particularly material reference in a prior art statement containing a multiplicity of other references can be probative of bad faith'').

Current IDS requirements are ineffective: Current §§ 1.97 and 1.98 do not encourage applicants to bring the most relevant information to the attention of the examiner early in the examination process, at least, in part, because applicants and practitioners mistakenly believe that people associated with a patent application must submit questionably or marginally relevant documents in order to ensure compliance with the § 1.56 duty of disclosure. A limited amount of time is available for an examiner's initial examination of the application, which includes at least a mandatory cursory review of each document cited. Thus, when large IDSs are submitted without any identification of relevant portions of documents, some of the examiner's limited time is diverted to consider the cited documents, and efforts to perform a quality examination may be adversely affected. This is especially true when the submission includes irrelevant or marginally relevant documents, and the situation is worsened when a large number of the documents are irrelevant, marginally relevant, or cumulative. It appears that applicants sometimes file large collections of information for the examiner's review without having first reviewed the information themselves for relevance in the mistaken belief that such action is permitted under the current rules. If irrelevant information is filtered out before an IDS is filed, the examiner will be able to focus upon the more relevant information, and perform a more efficient, effective examination.

The effectiveness and quality of the examination process, as well as the resulting patentability determinations, stand to improve if the most pertinent information about the invention is before the examiner during examination, and especially before the first Office action. Early submission of pertinent information by the applicant goes hand in hand with an examiner's prior art search in making sure that the goals of improving the effectiveness and quality of the examination process, and the resulting patentability determinations, are achieved. The Office recognizes, however, that sometimes not all pertinent information is available for submission prior to the first Office action on the merits. Therefore, to allow for such circumstances while still achieving these goals, the later a document is submitted during the prosecution process, the greater the amount of additional disclosure that the applicant will be required to provide. The Office is proposing a structure for filing IDSs that will enable applicants to provide meaningful information to the examiner in the most effective and efficient manner.

Elimination of fee requirements (§ 1.17(p)): The fee requirement under § 1.17(p) for submitting an IDS is proposed to be eliminated. Under current § 1.97, an applicant can delay the examiner's receipt of relevant information until after the initial stage of examination by simply paying the fee under § 1.17(p). Under the proposed rules, an applicant wishing to submit an IDS after a first Office action on the merits and before the mailing date of a notice of allowability or a notice of allowance under § 1.311 could only do so if applicant meets the certification requirements under § 1.97(e)(1) (that the information was discovered as a result of being cited by a foreign patent office in a counterpart application and is being submitted to the Office within three months of its citation by the foreign patent office), or applicant complies with applicable additional disclosure requirements.

The current requirements under §§ 1.97 and 1.98 for submitting an IDS after a notice of allowance are proposed to be revised by providing two windows, one before, or with, and one after, payment of the issue fee. Submission of an IDS during either of these two windows will require compliance with heightened additional disclosure requirements (compared to those required for submissions after a first Office action but prior to a notice of allowance or notice of allowability), which will depend upon whether a current claim is unpatentable in view of the information in the newly submitted IDS.

Threshold number of cited information: Under the proposed rules, when an applicant submits an unusually large amount of information before a first Office action, the applicant must help to ease the burden on the Office associated with the examiner's consideration of the information. The Office has surveyed, across all technologies, 3,084 small entity applications and 9,469 non-small entity applications, covering a six-week period of allowed applications to determine the

appropriate threshold number of cited information. In this survey, which includes all IDSs submitted at any time during the prosecution process of an application, approximately eighty-five percent of the sample included twenty or fewer submitted documents, while eighty-one percent of applications included fifteen or fewer submitted documents. Thus, the Office has determined that for IDSs submitted prior to a first Office action on the merits, a threshold of twenty documents best balances the interests of the Office and of the applicants. It should be noted that a threshold of twenty documents for IDSs submitted prior to a first Office action on the merits would not require a change in practice for most applications. The Office expects that more than eighty-five percent of IDSs filed prior to first Office action on the merits would not require any explanation because the threshold number only applies to IDSs filed prior to first Office action and has certain exceptions, while the above-mentioned survey included all IDSs filed throughout the entire prosecution of the application with no exceptions. The threshold of twenty cited pieces of information is deemed adequate, particularly in view of the fact that documents resulting from a foreign search or examination report when accompanied by a copy of the foreign search or examination report, would be excepted (not counted toward the threshold number). In addition, documents submitted in reply to a requirement for information under § 1.105 would also be excepted.

Additional Disclosure Requirements: The Office is proposing additional disclosure requirements for some IDS submissions to promote effective and efficient examination. First, for applications in which twenty or fewer documents have been cited in one, or more IDS prior to a first Office action on the merits, an explanation is required only for English-language documents over twenty-five pages, and for non-English-language documents of any length. Second, for applications in which more than twenty total documents have been cited in one, or more, IDS prior to a first Office action on the merits, an explanation is also required for each cited document. The required explanation must identify information in each document that is relevant to the claimed invention or supporting specification. These required explanations are intended to provide meaningful information to the examiner when a large IDS, considering all IDSs cumulatively which are filed within this window of time, is presented before a first Office action on the merits has been given.

More extensive disclosure requirements would apply to IDS submissions after a first Office action on the merits. Thus, applicant would be required to provide a non-cumulative description as well as an explanation, or a copy of a recently issued foreign search or examination report, for each document submitted after a first Office action on the merits. Where an IDS is filed after the mailing date of a notice of allowability or a notice of allowance under § 1.311, applicant would be required to provide an appropriate patentability justification, which includes the explanation and non-cumulative description required after a first Office action, and reasons why the claims are patentable over the cited document(s).

If an applicant presents unusually long documents, foreign-language documents, or a large number of documents, more than a brief review by the examiner is likely to be needed to reveal the most pertinent portions of the documents. In such situations, the applicant's help is needed so that the examiner may provide the best and most efficient examination possible. Therefore, the proposed amended rules require that in appropriate cases applicants must provide additional disclosure, such as an identification of a portion of a document that caused it to be cited, and an explanation of how the specific feature, showing, or teaching of the document correlates with language in one or more claims. In those rare instances, where the specific feature, showing, or teaching cannot be correlated to a claim limitation, correlation to a specific portion of the supporting specification would be required.

If an applicant presents cumulative information, review of such information would waste examiner resources. Accordingly, an IDS must not cite documents that are merely cumulative of other cited information or supply information merely cumulative of what is already present in the record. To aid in compliance with this prohibition, applicants are required to submit a non-cumulative description for IDSs submitted after a first Office action and after allowance. A non-cumulative description is one that describes a disclosure in the cited document that is not present in any other document of record.

Thus, while there may be substantial overlap between a currently cited document and a document previously of record, the currently cited document must include a teaching, showing, or feature not provided in other documents of record, and the non-cumulative description must point this out.

Examiner's consideration of information: Documents submitted in an IDS are reviewed in the same manner as items of information obtained by the examiner from other sources. That is, a document is given an initial brief review in order to determine whether it warrants a more in-depth study. Two indicators of the need for a more thorough review are: (1) That the document has been applied in a rejection, or specifically commented on by an examiner, in a case drawn to the same or similar subject matter; or (2) that the document has been particularly described by the applicant and its relevance to the claimed invention and/or supporting specification clarified. This practice reflects the practical reality of patent examination which affords the examiner a limited amount of time to conclude all aspects of the examination process.

Unsolicited information supplied to applicants by third parties: Some applicants receive large amounts of unsolicited information from third parties, sometimes accompanied by an allegation that the information is relevant to particular technologies or applications. Currently, many applicants simply submit such information to the Office via an IDS. The Office is proposing to avoid the burdens to both the Office and applicants occasioned by this practice by clarifying that applicant may opt to provide written consent to the filing of a protest by the third party based on such information, thus shifting the explanation burden back to the third party.

Conclusion: The Office believes that the proposed changes will enhance the examination process for both examiners and applicants. Ensuring a focused and thorough examination is a joint responsibility of the examiner and the applicant, particularly as examination is not seen by the Office as an adversarial process. The proposed changes provide an incentive to the applicant to cite only the most relevant documents, and are designed to provide the examiner with useful and relevant information early in the examination process. All parties involved with, or affected by, the patent system want the patent examination system to ''get it right'' the first time. Concentrating the patent examiner's review on the information most pertinent to patentability prior to a first Office action on the merits will significantly help in achieving this goal.

Discussion of the Specific Rules

Title 37 of the Code of Federal Regulations, Part 1, is proposed to be amended as follows:

Section 1.17: Section 1.17(h) is proposed to be amended to provide a petition fee for a petition to withdraw a reexamination proceeding from the publication process under § 1.98(a)(3)(iii)(B). This proposed amendment reflects that there is no withdrawal of a reexamination proceeding from issue available under § 1.313; thus, a petition to withdraw a reexamination proceeding from the publication process would be filed under § 1.98(a)(3)(iii)(B), not under § 1.313.

Section 1.17(p) is proposed to be revised to delete the IDS fee requirements in §§ 1.97(c) and (d), as a conforming change.

Section 1.48: Section 1.48 is proposed to be amended in the title, paragraph (h), and by the addition of paragraph (k), including (k)(1) through (k)(3), to address a change in the order of inventors' names, and a change in the spelling, or updating of an inventor's name in pending or abandoned applications.

Section 1.48(h) would be revised to clarify the exclusion of correction of inventorship via reexamination or reissue under § 1.48. This exclusion of reexamination is analogous to the exclusion of correction of inventorship in patents under § 1.48 clarified by § 1.48(i).

Section 1.48(k) would require that the requests pursuant to § 1.48(k) be accompanied by a processing fee of $130.00 pursuant to § 1.17(i) for non-provisional applications, or $50.00 pursuant to § 1.17(q) for a provisional application (where applicable). Additionally, each request pursuant to § 1.48(k) should also be accompanied by a supplemental application data sheet, pursuant to § 1.76, for changes in a nonprovisional application. The concomitant submission of a supplemental application data sheet pursuant to § 1.76 with a request pursuant to § 1.48(k) is strongly advised as the best means to ensure that the Office will recognize such requested change, particularly after the mailing of a notice of allowance, when such information is needed for printing inventorship information on the face of any patent to issue. The requests permitted under § 1.48(k) are limited to non-reissue applications and do not cover issued patents, which would require that a certificate of correction procedure be used. Thus, § 1.48(k) is not applicable to reissue applications or reexamination proceedings. A newly executed § 1.63 oath or declaration is not required. The submission of a newly executed § 1.63 declaration would not be effective; rather, applicant must proceed via § 1.48(k) to effectuate the changes permitted by this provision.

Section 1.48(k)(1) would provide that the order of the inventors' names may be changed to another specified order, except in provisional or reissue applications. Currently, such requests would generally be done by petition under § 1.182 with a petition fee of $400. MPEP § 605.04(f).

Section 1.48(k)(2) would provide a means to change the spelling of an inventor's name in either a provisional or nonprovisional application. Currently, such requests, other than typographical or transliteration errors, would be done in nonprovisional applications by petition under § 1.182 and a petition fee of $400.00. *See* MPEP § 605.04(b). Section 1.48(k)(2) would cover all requests for a spelling change, including typographical errors (made by applicant) and transliteration errors. This would eliminate the time consuming back and forth correspondence as to whether a change in spelling was in fact a typographical or transliteration error, or whether a petition has to be filed, particularly as many requests for change in spelling are attempted to be submitted under the umbrella of typographical or transliteration errors when clearly they are not.

Section 1.48(k)(3) would provide a means to update an inventor's name (*e.g.*, changed due to marriage) when it has changed after the filing of an application (excluding reissue applications). A request for updating an inventor's name must be accompanied by: (i) An affidavit signed with both names and setting forth the procedure whereby the change of names was effected; or (ii) a certified copy of a court order for name change. Such change in name is currently accomplished by the filing of a petition under § 1.182 and a petition fee of $400. MPEP § 605.04(c). Where an inventor's name was changed prior to the filing of an application, yet the old name was utilized in an executed § 1.63 declaration, a petition under § 1.48(a) would be required.

Section 1.55: Section 1.55(a)(2) is proposed to be amended to be consistent with the proposed changes to § 1.312, which provides an expanded opportunity for applicants to have entered certain technical amendments after the close of prosecution in an allowed application without withdrawal of the application from issue. Specifically, under the proposed changes to § 1.312(a)(2), a foreign priority claim made after the payment of the issue fee may be included in the patent if submitted in sufficient time to allow the patent to be printed with the priority claim and a petition to accept an unintentionally delayed priority claim pursuant to § 1.55(c) has been filed (if required) and granted. In addition, § 1.312(b) is proposed to be amended to provide that if the patent does not include the amendment filed after payment of the issue fee, the amendment would not be effective unless the patent is corrected by a certificate of correction under 35 U.S.C. 255 and § 1.323. See the proposed changes to §§ 1.312(a)(2) and (b).

Accordingly, the last sentence of § 1.55(a)(2) is proposed to be amended to delete the phrase ''but the patent will not include the priority claim unless corrected by a certificate of correction under 35 U.S.C. 255 and § 1.323'' and to insert a new last sentence, ''If the patent did not publish with the priority claim, the amendment adding the priority claim will not be effective unless corrected by a certificate of correction under 35 U.S.C. 255 and § 1.323.'' The change in language in § 1.55 is for conformance with the changes proposed to § 1.312. The current language being replaced in § 1.55 presumes that a priority claim filed after the date the issue fee is paid will not be entered and will not, therefore, be effective and the addition of a priority claim must therefore be treated as a certificate of correction after the patent has issued. The proposed amendment to § 1.312 would permit the entry of a priority claim after the issue fee has been paid, provided it is submitted in sufficient time to allow the priority claim to be printed on the face of the patent and a grantable petition under § 1.55(c) to accept an unintentionally delayed priority claim is filed, if required. Accordingly, the new language to § 1.55 addresses the situation where sufficient time was not present to allow printing of the priority claim on the face of the patent and the amendment adding the priority claim must be corrected by certificate of correction.

Section 1.56: Section 1.56 is proposed to be amended by the addition of paragraph (f) that would provide a ''safe harbor'' for a § 1.56(c) individual who, in good faith and to the best of the person's knowledge, information and belief, formed after a reasonable inquiry under the circumstances, took reasonable steps to comply with the additional disclosure requirements of § 1.98(a)(3). While the proposed amendment to § 1.56 may not act as a

complete defense in all situations, particularly as the court is not bound by any one duty of disclosure standard established by the Office, the Office is hopeful that a court in deciding a duty of disclosure issue will take the proposed safe harbor into account.

Section 1.97: Section 1.97(a) is proposed to be amended to reflect the applicability of § 1.97 to reexamination proceedings and to add other clarifying language.

Sections 1.97(b), (c), (d)(1), and (d)(2) would identify four time periods for submission of information disclosure statements (IDSs). Section 1.98(a)(3) would set forth ''Additional disclosure requirements'' specific to each time period that must be met for submission of IDSs during each of these time periods.

Section 1.97(b) would identify a ''First time period'' for submitting IDSs, with paragraphs (b)(1) through (b)(3) reciting the current periods for submitting an IDS within three months from the filing date of a national application or entry of the national stage, or before the mailing of a first Office action, or within three months of the filing of a reexamination. The expression ''filing date'' means the actual filing date of the application and does not include filing dates for which a benefit is claimed under 35 U.S.C. 119, 120, 121, or 365. Thus, an IDS may be submitted within three months of the actual filing date of a continuation, divisional, or continuation-in-part application pursuant to § 1.97(b)(1).

Section 1.97(b)(1) is also proposed to be amended to add ''35 U.S.C. 111(a),'' the statutory basis for the recited national application.

Section 1.97(b)(4) is proposed to be deleted. Any IDS filed with a request for continued examination under § 1.114 (RCE), or after an RCE is filed but before a first Office action is mailed in the RCE, would need to comply with the time requirements of §§ 1.97(c) or (d), whichever is applicable.

Section 1.97(c) would identify a ''Second time period'' for submitting IDSs and would apply to IDSs filed after the period specified in paragraph (b) of this section, and before the earlier of the mailing of a notice of allowability or a notice of allowance under § 1.311 for an application, or the mailing of a Notice of Intent to Issue Reexamination Certificate (NIRC) for a reexamination proceeding.

Currently, a second time period for submission of IDSs pursuant to § 1.97(c) permits submission of an IDS in an application simply by payment of a fee or by compliance with the statements provided by § 1.97(e), relating to discovery of the information within three months of its submission to the Office. The proposed ''Second time period,'' § 1.97(c), would eliminate the fee payment option, while retaining a § 1.97(e)(1) option. Applicants/patent owners, in proposed § 1.98(a)(3)(ii), would be offered an additional option, other than compliance with § 1.97(e)(1), provided the applicant/patent owner is willing to comply with additional disclosure requirements referenced in §§ 1.98(a)(3)(iv) and (a)(3)(v).

The references, in current § 1.97(c), to a final action under § 1.113 or actions that otherwise close prosecution, are unnecessary and thus deleted. IDSs that are submitted after close of prosecution, such as after a final rejection, are inherently included in the expression ''submitted prior to the mailing of a notice of allowance.'' The § 1.97 practice of treating an IDS submitted after a final Office action under § 1.113, such as a final rejection, would not change other than removal of the fee requirement and would still continue to be considered by the examiner in the next Office action, as appropriate. If there is no next Office action (*e.g.*, the application goes abandoned), the IDS will be placed in the file but not considered, as in current practice.

Section 1.97(c) would also be amended to provide for its applicability to reexamination proceedings in regard to the issuance of a Notice of Intent to Issue a Reexamination Certificate (''NIRC'').

Section 1.97(d)(1) is proposed to be amended to be labeled a ''Third time period,'' and would permit consideration of an IDS filed in an application after the period set forth in § 1.97(c) (after the earlier of a notice of allowability or notice of allowance), and before or with payment of the issue fee. Submission under the ''Third time period'' would be under more limited conditions than the conditions for submitting an IDS during the ''Second time period''; however, the fee under § 1.17(p) would be eliminated. Because reexamination proceedings are not required to pay an issue fee, this ''Third time period'' is not applicable to reexamination proceedings. All IDSs filed in reexamination proceedings after the NIRC will be in the ''Fourth time period'' defined in proposed § 1.97(d)(2).

Proposed § 1.97(d)(2) would be labeled a ''Fourth time period,'' and would permit consideration in an application of an IDS filed after payment of the issue fee and in sufficient time to be considered by the examiner before issue of the application, under more limited conditions than under the ''Third time period'' pursuant to § 1.97(d)(1). In a reexamination proceeding, this time period would begin when the NIRC is issued and end at issue of a Reexamination Certificate under § 1.570 or § 1.997.

Section 1.97(e) would be amended by changing ''statement'' to ''certification'' and ''state'' to ''certify,'' to clarify this requirement in light of the requirements of proposed § 1.98(a)(3).

Section 1.97(f) would be amended to contain a reference to § 1.550 and § 1.956 (for reexamination proceedings).

Section 1.97(g) would be amended to replace ''section'' with ''§ 1.98.''

Section 1.97(h) is provided merely for context and no amendments are proposed therein.

Section 1.97(i) would be amended by reformatting the current material as paragraph (i)(1), and adding paragraph (i)(2). In addition, § 1.97(i)(1) would contain a reference to § 1.98(a)(3)(vii)(C), requiring meaningful compliance with the requirements for explanations, non-cumulative descriptions, and reasons supporting a patentability justification or the Office may decline to consider the information disclosure statement.

Section 1.97(i)(2) would permit applicant to obtain additional time to complete the required information to accompany the IDS where a portion of the information was inadvertently omitted. The grant of additional time would be solely at the discretion of the Office.

New § 1.97(j) would be added to make clear that IDSs filed during the ''Fourth time period'' (after the issue fee is paid or the NIRC) would not be effective to withdraw the application from issue, hence the requirement in § 1.98(a)(3)(iii)(B), or to withdraw a reexamination proceeding from the publication procedure for a reexamination certificate.

Sections 1.97(a), (b)(1), (c), and (d)(2) would be amended to explicitly set forth the required time frames for filing an IDS in a reexamination proceeding. Pursuant to current § 1.555(a), an IDS in a reexamination proceeding ''must be filed with the items listed in § 1.98(a) as applied to individuals associated with the patent owner in a reexamination proceeding.'' Section 1.555(a) then sets forth a recommended time for filing an IDS, stating that the IDS ''should be filed within two months of the date of the order for reexamination, or as soon thereafter as possible.'' The need to obtain the best art in the proceeding as soon as possible is even greater in a reexamination proceeding than in an application, since by statute (35 U.S.C. 305, and 314(c)) reexamination

proceedings are to be ''conducted with special dispatch within the Office.'' Accordingly, it is proposed to revise the regulatory statement of the time frames for IDS submissions in reexaminations by revising §§ 1.97(a), (b)(1), (c), and (d)(2), thus making the time frames for reexaminations track the time frames for IDS submissions in applications. It is also proposed that § 1.555(a) be amended to delete the optional time frame appearing therein, and to require the time frames set forth in § 1.97, as it is proposed to be revised.

Section 1.98: Section 1.98 is proposed to be substantially amended, including § 1.98(a)(3) defining ''Additional disclosure requirements'' composed of: (1) Paragraphs (a)(3)(i) through (a)(3)(iii), which define the type of additional disclosure requirements to be met based on the time period of submission of the IDS, including the particular documents requiring the additional disclosure; (2) paragraph (a)(3)(iv), which defines a two-part explanation requirement (identification of at least a portion of a cited document, and correlation of the portion(s) identified to specific claim language or to a specific portion of the specification when the document is cited for that purpose); (3) paragraph (a)(3)(v), which defines a non-cumulative description requirement; and (4) paragraph (a)(3)(vi), which defines two alternative types of patentability justification.

Section 1.98(a), (a)(1) and (2), and (a)(1)(i) are proposed to be amended for technical corrections or conforming amendments.

Section 1.98(a)(2)(iii) is proposed to be amended to no longer require submission of a legible copy of each cited pending or abandoned U.S. application's specification, including the claims, and drawing(s) when the cited pending or abandoned U.S. application is stored at the Office in the electronic form currently referred to as the image file wrapper (IFW). If the cited pending or abandoned U.S. application is not stored in the Office's IFW, a legible copy of the application or the portion of the application which caused it to be cited is still required. In addition, even if the cited pending or abandoned U.S. application is stored in the Office's IFW, consideration of any portion of the application file outside of the specification, including the claims, and drawings requires that a legible copy of that portion be included in the IDS. This proposed amendment implements a previous limited waiver of the requirement in § 1.98(a)(2)(iii), and also expands on the previous waiver by including abandoned applications in addition to pending applications. *See Waiver of the Copy Requirement in 37 CFR 1.98 for Cited Pending U.S. Patent Applications,* 1287 *Off. Gaz. Pat. Office* 162 (Oct. 19, 2004).

Sections 1.98(a)(3)(i) and (a)(3)(ii) are proposed to be significantly amended and incorporated into newly proposed § 1.98(a)(3).

Section 1.98(a)(3) is proposed to set forth ''Additional disclosure requirements'' specific to each time period identified in §§ 1.97(b), (c), (d)(1), and (d)(2) that must be met for submission of IDSs during each of these time periods.

Section 1.98(a)(3)(i) would provide that IDSs submitted within the ''First time period'' of § 1.97(b) (*e.g.*, prior to a first Office action) that contain: (1) Foreign language documents (§ 1.98(a)(3)(i)(A)); (2) any document over twenty-five pages excluding sequence listings or computer program listings (§ 1.98(a)(3)(i)(B)); or (3) more than twenty documents, calculated cumulatively (§ 1.98(a)(3)(i)(C)), would be required to provide additional disclosure in accordance with proposed § 1.98(a)(3)(iv) of an explanation (an identification of at least one portion causing the document to be cited, including a specific feature, showing, or teaching, and correlation to specific claim language, or where correlation to claim language is not possible, correlation may be made to a specific portion of the supporting specification), with exceptions set forth in §§ 1.98(a)(3)(viii)(A) and (a)(3)(viii)(C). In addition, where a foreign language document is being submitted, any existing translation would also be required, § 1.98(a)(3)(xi).

Foreign language documents of any length would trigger the explanation and translation requirements. English language documents (non-foreign language) include: English language nonpatent literature, U.S. patent documents (patents and patent application publications), and English language foreign patent documents. Use of foreign language terminology or expressions such as for Latin proper names for plants and animals would not make an otherwise English language document a non-English language document. Similarly, the presence of an English language abstract would not make a foreign language document an English language document for the purpose of § 1.98(a)(3)(i)(A).

The threshold for document size is over twenty-five pages. In calculating documents over twenty-five pages, sequence listings, or computer program listings, pursuant to § 1.52(e)(1) would be excluded (§ 1.98(a)(3)(i)(B)). In determining the number of pages of a document, all sheets of the document being submitted are counted, including drawing sheets and cover sheets (but not sequence listings or computer program listings). Applicant is permitted to submit only a portion of a document and is encouraged to do so where that portion can be considered without further context and is the only portion that is relevant to the claimed invention. When applicant elects to submit selected pages of a document, those pages will be counted to determine the length of the cited (partial) document and whether an explanation is required for that document.

The threshold number of documents for one or more IDSs filed before a first Office action is twenty calculated cumulatively in a single application or proceeding. The threshold number of documents can be reached either in multiple (sequential) IDSs each containing fewer than the twenty trigger value, or all at once in a single IDS. Documents that do not comply with the timeliness requirements of § 1.97, or the technical requirements of § 1.98, (and thus may not be considered) would not count toward the cumulative total pursuant to § 1.98(a)(3)(i)(C). Additionally, a document that is not compliant with the requirements of § 1.98 would not be double counted toward the threshold number if it was resubmitted to cure the non-compliance. Accordingly, for example, an applicant who realizes that a twenty-three-document IDS submission made prior to the mailing of a first Office action on the merits did not contain the required additional disclosure may either submit the additional disclosure for the twenty-three documents, or withdraw three of the documents, provided such action is taken within the time frame of § 1.97(b)(3).

Documents that are not included in an IDS but are mentioned in the specification as background information would not count toward the threshold number. The examiner is under no obligation to review documents cited in the specification. *See* MPEP § 609 III C (1), Noncomplying Information Disclosure Statements. Where applicant desires review of a particular document, that document must be cited in a compliant IDS.

For continuing applications, documents of a compliant IDS in the prior application, which were required to be reviewed by the examiner therein (*see* MPEP § 609 I, IDS IN CONTINUED EXAMINATIONS OR CONTINUING APPLICATIONS), would not be considered as part of the cumulative total in a continuing application unless they are resubmitted in the continuing

application (so that they will appear on the face of the patent that issues from the continuing application). In addition, all other documents (*e.g.*, previous documents that were noncompliant with §§ 1.97 and 1.98 and never considered by the examiner in the prior application) in prior applications would not be counted toward the threshold number in a continuing application, unless they are resubmitted in the continuing application.

Section 1.98(a)(3)(i) would provide for exceptions to the additional disclosure requirements by reference to §§ 1.98(a)(3)(viii)(A) and (a)(3)(viii)(C). For IDSs submitted in the first time period, applicant may submit documents resulting from a foreign search or examination report where a copy of the report is submitted (§ 1.98(a)(3)(viii)(A)), and documents submitted in reply to a requirement for information pursuant to § 1.105 (§ 1.98(a)(3)(viii)(C)), without triggering any additional disclosure requirements.

Section 1.98(a)(3)(ii) would provide that all information in IDSs submitted within the ''Second time period'' of § 1.97(c) (*e.g.*, after a first Office action and prior to the earlier of a notice of allowability or a notice of allowance), must be accompanied by additional disclosure in accordance with § 1.98(a)(3)(iv) (explanation) and § 1.98(a)(3)(v) (non-cumulative description), with exceptions set forth in §§ 1.98(a)(3)(viii)(B) and (a)(3)(viii)(C). Additionally, when a foreign language document is being submitted, any existing translation would also be required, § 1.98(a)(3)(xi).

Section 1.98(a)(3)(ii) would provide for exceptions to the additional disclosure requirements by reference to §§ 1.98(a)(3)(viii)(B) and (C). For IDSs submitted in the second time period, applicant may, without triggering any additional disclosure requirements, submit documents accompanied by a certification pursuant to § 1.97(e)(1) and a copy of the foreign search or examination report (§ 1.98(a)(3)(viii)(B)), and documents submitted in reply to a requirement for information pursuant to § 1.105 (§ 1.98(a)(3)(viii)(C)).

Section 1.98(a)(3)(iii) would provide that all documents submitted within the ''Third time period'' (*e.g.*, after the earlier of a notice of allowability or a notice of allowance and prior to payment of the issue fee), and the ''Fourth time period'' (*e.g.*, after payment of the issue fee and in sufficient time to be considered) must be accompanied by a certification under either §§ 1.97(e)(1) or (2).

Section 1.98(a)(3)(iii)(A) would provide that information submitted within the ''Third time period'' of § 1.97(d)(1) must be accompanied by either of two patentability justifications pursuant to § 1.98(a)(3)(vi)(A) (explanation, non-cumulative description and reasons supporting the patentability of the independent claims) or (B) (explanation, noncumulative description, an amendment, and reasons supporting the patentability of the amended claims).

Section 1.98(a)(3)(iii)(B) would provide that information submitted within the ''Fourth time period'' of § 1.97(d)(2) must be accompanied by a petition to withdraw from issue pursuant to § 1.313(c)(1), or to withdraw a reexamination proceeding from the publication process, and the patentability justification under § 1.98(a)(3)(vi)(B).

Section 1.98(a)(3)(iv) would provide a definition of the explanation that must be submitted to meet the additional disclosure requirements of § 1.98(a)(3). The explanation requirement consists of three parts, two in regard to an identification (§ 1.98(a)(3)(iv)(A)) and one in regard to a correlation, § 1.98(a)(3)(iv)(B).

Section 1.98(a)(3)(iv)(A) would provide for the identification portion of the explanation requirement. Section 1.98(a)(3)(iv)(A) would require an identification of specific feature(s), showing(s), or teaching(s) that caused a document to be cited. Where applicant is unaware of any specific relevant portion(s) of a document, that document should not be submitted to the Office. The bare recitation that a document was provided to applicant by a third party or was discovered during a pre-examination search is an insufficient identification.

Section 1.98(a)(3)(iv)(A) would provide for the identification of a portion(s) of a document where the specific feature(s), showing(s), or teaching(s) may be found. For example, a proper identification would indicate, by page and line number(s), or figure and element number(s), where to look in the document for the portion.

The identification requirements require applicant to identify at least one appearance in the document (a representative portion) of a specific feature, showing, or teaching for which the document is being cited. Where applicant is aware that such feature, showing, or teaching appears in more than one portion of the document, applicant would not need to specifically point out more than one occurrence, although applicant may wish to, particularly where the additional appearance may not be apparent to the examiner and may have some additional significance over its first identified appearance. Where applicant recognizes that a document is relevant for more than one feature, showing, or teaching, and is being cited for more than one feature, showing, or teaching, applicant would need to specifically identify each additional feature, showing, or teaching (and the portion where the feature, showing, or teaching appears in the document).

A mere statement indicating that the entire document, or substantially the entire document, is relevant, would not comply, and may result in the examiner electing not to consider the document. Where applicant believes that an entire document or most portions thereof are relevant and caused the document to be cited, applicant may make such statement so long as applicant establishes such fact by sufficient recitation of examples from the document. Sufficiency of recitation of examples will vary on a case-by-case basis. Applicant should, therefore, be wary of not identifying at least one specific portion of a document since noncompliance may, if not corrected in a timely and proper manner, result in the document not being considered.

Documents merely representing background information may be identified and discussed in the specification. There is generally little utility in submitting a background document as part of an IDS, particularly after a first Office action. In the isolated situation where applicant wishes to identify a purely background document after a first Office action on the merits, the document can be discussed as part of the Remarks/Arguments section of a reply to the Office action. Clearly, background documents can be supplied prior to a first Office action on the merits in an IDS without discussion where twenty or fewer documents are being submitted, provided that the background document is less than twenty-five pages, and the document is not in a foreign language.

Section 1.98(a)(3)(iv)(B) would additionally require a correlation of the specific feature(s), showing(s), or teaching(s) identified pursuant to § 1.98(a)(3)(iv)(A) to specific corresponding claim language, or to a specific portion(s) of the specification that provides support for the claimed invention, where the document is cited for that purpose. Optionally, applicant may indicate any differences between the specific claim language and what is shown, or taught, in the document. The specific claim language may be in either an independent claim or a dependent claim.

The alternative of correlation to a specific portion of the specification, rather than to a specific claim, is available in the limited circumstances where correlation cannot be made to specific claim language, as the document is not cited for that purpose. The alternative correlation is intended to include aspects of the supporting specification that define claim scope or support compliance with requirements of the patent statutes. For example, where a document is submitted to identify a particular scope of a claim, such as where there is a means-plus-function claim limitation pursuant to 35 U.S.C. 112, ¶ 6, the correlation explanation would be satisfied when drawn to this aspect. Additionally, where a document is being submitted that relates to utility of the claimed invention, compliance with the written description requirement, or enablement, the correlation explanation would be satisfied when drawn to these aspects rather than being drawn directly to specific claim language.

A particular correlation between a specific feature, showing, or teaching of a document and an element of a claim may not be representative of variations of the same specific feature, showing, or teaching as recited in another claim. For example, a specific feature, showing, or teaching may be recited by certain language in one claim, while that specific feature, showing, or teaching may be recited by entirely different claim language in another claim. In such circumstances, in order to comply with the correlation requirement, applicant would need to identify one instance of each different recitation of the specific feature, showing, or teaching in the different claims.

The correlation explanation, whether to specific claim language or the supporting specification, must make clear why a specific feature, showing, or teaching in a document that is being correlated to the claimed invention, actually correlates thereto.

The Office does not contemplate that complying with the identification and correlation of additional requirements will require an extensive submission. The Office believes that, in most cases, a compliant submission would include several sentences that: identify a specific feature, showing, or teaching causing submission of a document (*e.g.*, rotary pump, element 32), identify the portion of the document where the feature, showing, or teaching may be found (*e.g.*, Figure 3 in Patent A), and correlate the specific feature, showing, or teaching to specific claim language (*e.g.*, the rotary pump in Figure 3, element 32 of Patent A correlates to the rotary pump in claim 1 of the application).

Applicant's attempted correlation of a specific feature, showing, or teaching in a document may not, for example, be readily recognizable as actually correlating to identified claim language, particularly where such claim language may be a more generic or alternative way of reciting the feature, showing, or teaching. In such instances, applicant would need to add some explanatory material, particularly to avoid a possible finding of noncompliance by the examiner with the correlation requirement.

Section 1.98(a)(3)(v) would define a non-cumulative description requirement that must accompany an IDS submission when the IDS is submitted in the second, third, or fourth time periods, as citation of merely cumulative information must be avoided, § 1.98(c). The non-cumulative description would require a description of how each document being submitted is not merely cumulative of any other IDS-cited document previously submitted, any document previously cited by the examiner, or any document cited under §§ 1.99 and 1.291. The description may be of a specific feature, showing, or teaching in a document that is not found in any other document of record. The non-cumulative description requirement for the second time period (§ 1.97(c)) is subject to the exceptions set forth in §§ 1.98(a)(3)(viii)(B) and (a)(3)(viii)(C), while the non-cumulative description requirement for the third time period (§ 1.97(d)(1)) is subject to the exception set forth in § 1.98(a)(3)(viii)(B).

Section 1.98(a)(3)(vi) would define alternative patentability justifications (§§ 1.98(a)(3)(vi)(A) and (a)(3)(vi)(B)), which would be applicable for IDSs submitted during the third time period (*e.g.*, after allowance), with the § 1.98(a)(3)(vi)(B) justification required during the fourth time period (*e.g.*, after payment of the issue fee). Section 1.98(a)(3)(vi)(A) would require an explanation pursuant to § 1.98(a)(3)(iv), a non-cumulative description pursuant to § 1.98(a)(3)(v), and reasons why (each of) the independent claims are patentable over the information in the IDS being submitted considered together, and in view of any information already of record, but particularly in view of information previously used to reject the independent claim(s).

The expression ''information previously used to reject'' includes applied prior art used in a rejection which was subsequently withdrawn and is no longer utilized in a pending rejection.

A foreign search or examination report may be acceptable as the required explanation of patentability or the statement of unpatentability under either of the above requirements, respectively, if the report provides sufficient details to comply with § 1.98(a)(3)(vi).

Section 1.98(a)(3)(vi)(B) is the only procedure for IDSs submitted in the fourth time period (after payment of the issue fee or NIRC). In this time period, information may be submitted only if a claim is unpatentable over the information being submitted either considered alone or in combination with information already of record. This patentability justification would require an explanation pursuant to § 1.98(a)(3)(iv) of this section, a non-cumulative description pursuant to § 1.98(a)(3)(v) of this section, and reasons why an amendment causes claims, admitted to be unpatentable over the information submitted in an IDS, to now be patentable over such information when considered together, and in view of any information already of record, but particularly in view of information previously used to reject such claims.

While the alternative patentability justifications require consideration of certain documents, the ''reasons why'' supplied need only address the most relevant documents and need not discuss all the documents required to be considered.

Section 1.98(a)(3)(vii) would recognize that applicant must meaningfully comply with the additional disclosure requirements.

Section 1.98(a)(3)(vii)(A) would require that the explanations pursuant to § 1.98(a)(3)(iv) must include a level of specificity commensurate with specifics of the feature(s), showing(s), or teaching(s) which caused the document to be cited. These explanations must not be *pro forma* explanations. Additionally, it would be required that the non-cumulative descriptions pursuant to § 1.98(a)(3)(v) must be significantly different so as to point out why the cited document is not merely cumulative of any other information currently being filed, or previously of record.

Section 1.98(a)(3)(vii)(B) would require that the reasons for patentability justification, pursuant to § 1.98(a)(3)(vi), must address specific claim language relative to the specific feature(s), showing(s), or teaching(s) of the cited documents, or those already of record. Section 1.98(a)(3)(vii)(C) would provide that where the explanations or non-cumulative descriptions do not comply with § 1.98(a)(3)(vii)(A), or the reasons

for patentability justification do not comply with § 1.98(a)(3)(vii)(B), the Office may decline to consider the information disclosure statement. See also § 1.97(i)(1). The examiner may optionally, however, choose to cite a reference contained in a non-compliant IDS.

Section 1.98(a)(3)(viii) would provide for three possible exceptions to the additional description requirements of § 1.98(a)(3).

Section 1.98(a)(3)(viii)(A) would provide an exception pursuant to § 1.98(a)(3)(iv) for documents submitted within the first time period (*i.e.*, prior to first Office action) that result from a foreign search or examination report where a copy of the report is submitted with the IDS. A specific certification pursuant to § 1.97(e) is not required nor must the three-month time frame be met.

Section 1.98(a)(3)(viii)(B) would provide an exception to the explanation and non-cumulative description requirements when an IDS is submitted in the second time period (§ 1.97(c)) and is accompanied by a certification pursuant to § 1.97(e)(1) and a copy of the foreign search or examination report.

Section 1.98(a)(3)(viii)(C) would provide an exception to the explanation and non-cumulative description requirements when an IDS is submitted in the first (§ 1.97(b)) and second (§ 1.97(c)) time periods for documents submitted in reply to a requirement for information pursuant to § 1.105.

Section 1.98(a)(3)(ix) would provide a requirement for updating previous IDSs for amendments affecting the scope of the claims, other than examiner's amendments, submitted after an IDS. Section 1.98(a)(3)(ix)(A) would provide that any previously provided explanation pursuant to § 1.98(a)(3)(iv) must be reviewed and updated where necessary in view of subsequently filed amendments. If, however, no update is warranted because all previous explanations are still relevant and accurate, § 1.98(a)(3)(ix)(B) would provide that a statement must be supplied to the effect that updating of the previous IDS is unnecessary. Failure to comply with the update requirements, including the need for a statement that an update is needed, may result in a reply containing the amendment being treated as not fully responsive, pursuant to MPEP § 714.03, with a correction required.

Section 1.98(b)(3) would be amended to replace ''inventor'' with ''applicant'' as a technical amendment to conform to the language of § 1.98(b)(2).

Section 1.98(c) would be amended to require that the submission of merely cumulative documents be avoided, and that the Office may decline to consider an information disclosure statement citing documents that are merely cumulative. The submission of cumulative information may obscure other more relevant information from the examiner. MPEP § 2004, item 13. Where review of an IDS reveals the presence of a pattern of merely cumulative documents to such extent that the utility of further review of the IDS is called into question, the IDS may be presumed to be non-compliant, and the Office may terminate further review of the IDS. In such instance, on the listing of the documents, the examiner will initial all citations that have been considered up to that point, including the cumulative documents, and line through all other documents not yet considered. In the next Office action, the examiner will identify to applicant the merely cumulative documents, and the non-compliant status of the IDS. Applicant could choose to resubmit the IDS in reply to the Office action provided applicant complies with any additional disclosure requirements, including the non-cumulative description, which will aid applicant in avoiding the submission of merely cumulative information.

Documents could be merely cumulative, notwithstanding the presence of different explanations (*e.g.*, two documents both containing only the same features A and B of the claimed invention, the explanation for the first document is to feature A, and the explanation for the second document is to feature B).

Section 1.98(d) would be amended: By replacing the reference to paragraph (a) with a reference to paragraph (a)(2), clarifying the recitations to earlier and later submitted information disclosure statements in paragraphs (d) and (d)(1), correcting the tense of ''complies'' to ''complied'' in paragraph (d)(2), and making a conforming change by removing the reference to paragraph (c) of § 1.98, and limiting the effect of paragraph (d)(2) to paragraphs (a)(1), (2), and (b) of § 1.98.

Section 1.99: Section 1.99 is proposed to be amended to change the time period for a submission under § 1.99 to within six months from the date of publication of the application (§ 1.215(a)), or prior to the mailing of a notice of allowance (§ 1.311), whichever is earlier. Section 1.99 currently requires that any submission § 1.99 be filed within two months from the date of publication of the application (§ 1.215(a)), or prior to the mailing of a notice of allowance (§ 1.311), whichever is earlier. Section § 1.99 is also proposed to be amended to eliminate the provision for filing a belated submission under § 1.99. The time period for a submission under § 1.99 (or the time period for a protest under § 1.291) is to limit any right of third parties to have information entered and considered in a pending application for administrative convenience. This time period for a submission under § 1.99 (or the time period for a protest under § 1.291) does not vest the applicant with any right to prevent the Office from *sua sponte* making such information of record in the application or relying upon such information in subsequent proceedings in the application (*i.e.*, the time period does not limit the authority of the Office to re-open the prosecution of an application to consider any information deemed relevant to the patentability of any claim).

It is to be noted that a § 1.99(a) submission by a third party is not a means for applicant to circumvent the requirements of § 1.97 and § 1.98. Rather, the treatment of the information in a § 1.99(a) submission is dependent upon the linchpin concept that it is being submitted by a (true) third party, and that there has been no solicitation of the third party by the applicant, or anyone acting on applicant's behalf. Section 1.99(a), and § 1.99 in general, are directed to a third party that is not in privity with the applicant, and is not any § 1.56(c) individual. Section 1.99(e) is proposed to be amended to state only that a submission by a member of the public to a pending published application that does not comply with the requirements of § 1.99 will not be entered.

Section 1.291: Sections 1.291(b), (b)(1) and (b)(2) would have their provisions rearranged and revised, and §§ 1.291(b)(3) through (b)(5) would be added. Section 1.291(c)(2) would be revised to set forth the degree of consideration given to items of information submitted in a compliant protest.

Section 1.291(b) as proposed would contain the descriptive label ''Treatment of a protest.''

Sections 1.291(b)(1)(i) through (b)(1)(iii) would set forth the conditions to be met for entry of protests into the record that are currently set forth in § 1.291(b). Section 1.291(b)(1)(iii) would contain the consent provision for entry of a protest which is currently set forth in § 1.291(b)(1), and § 1.291(b)(2) would provide consent specifics.

Pursuant to § 1.291(b)(1)(ii), the protest must be served on the applicant in accordance with § 1.248, or filed with

the Office in duplicate if service is not possible. In the usual case where the protest has been served on the applicant in accordance with § 1.248, the applicant will have one month from the date of service to file any objection that the protest has not in fact been consented to, or that the protest is not within the scope/terms of the consent. It should be rare that service of a protest is not possible since the applicant has consented to the filing of a protest and should therefore be available to be served. Where such a situation arises, however, the protest is submitted to the Office in duplicate with a statement that service is not possible. The Office will serve a copy of the protest on the applicant and the applicant will have one month from the date of Office service to file any objection that the protest has not in fact been consented to, or that the protest is not within the scope/terms of the consent.

Section 1.291(b)(2) would contain the introductory label ''Applicant consent and protestor statement.'' Section 1.291(b)(2) (together with § 1.291(b)(1)(iii)) would retain the current provision permitting consideration of a protest that is filed on or after the date an application is published if, and only if, the protest is filed based on the written consent of the applicant, and in time to match the protest with the application to permit review of the protest during examination of the application. The written consent of the applicant may be filed together with the protest, or it may already be of record in the application.

Section 1.291(b)(2)(ii) would provide that a consent to a protest may be limited by express terms only to: (1) The length of time for which the consent is in effect, at least thirty days (to give sufficient time for its submission), and (2) a specific party who can file the protest (if the identity of such a party is known to the applicant). The consent, however, must not be otherwise limited.

Section 1.291(b)(2)(iii) would provide that a protest filed based upon a consent under paragraph (b)(2) of this section must contain a statement that the submitted protest is based on the written consent of the applicant and falls within the terms of the consent. The statement would identify the consent, for example, as ''the written consent accompanying the instant protest'' or ''the written consent filed in the record of the application on [Provide date consent filed].'' The statement would inform the Office that the protester is a party permitted by the consent to file the protest, and that the protest is timely filed. A certificate of mailing or transmission under § 1.8 may be used to comply with any timeliness requirement imposed by applicant in the consent. Likewise, the protest may be filed in the Office by ''Express Mail'' pursuant to § 1.10.

Section 1.291(b)(3) would highlight the options that an applicant currently has in treating unsolicited information received from a party other than a § 1.56(c) individual, *i.e.*, a third party. This would not be a change in practice.

Section 1.291(b)(3)(i) recognizes that upon receiving unsolicited information (directed to an application) from a third party, applicant may submit the unsolicited information as an IDS, provided that applicant complies with the IDS requirements of §§ 1.97 and 1.98.

Section 1.291(b)(3)(ii) recognizes that applicant can provide a written consent pursuant to § 1.291(b)(2) to the third party (if known) for that third party to file unsolicited information with the Office as (part of) a protest. The section also provides for the alternative that if the third party is unknown, the written consent to the submission of a protest may be filed in the application. Given this alternative, an applicant need not feel compelled to submit such unsolicited information to the Office via an IDS.

Section 1.291(b)(3)(iii) recognizes that an applicant could submit the unsolicited information to the Office as a protest on behalf of the third party, even where the third party is yet unknown. In keeping with § 1.291(b)(2), applicant would not need to submit an explicit written consent to the protest along with the information, since applicant has made the submission. Applicant would, however, need to comply with § 1.291(c), including the requirement for a concise explanation, drafting the explanation itself if need be. Where the third party has provided an explanation that amounts to the concise explanation required by § 1.291(c)(2), applicant may rely on such explanation. Applicant would, however, need to review the explanation provided by the third party to determine whether it complies with the concise explanation standard and whether the concise explanation is accurate.

It is to be noted that a § 1.291(b)(3)(iii) protest submission on behalf of the third party is not a means for applicant to circumvent the requirements of § 1.97 and § 1.98. Rather, the treatment of unsolicited information in § 1.291(b)(3), and § 1.291 protests in general, is dependent upon the linchpin concepts of a (true) third party, and (actually) unsolicited information. Section 1.291(b)(3)(iii), and § 1.291 in general, are directed to a third party that is not in privity with the applicant, and is not any § 1.56(c) individual.

Applicant's knowledge of prior art gained during litigation or through license negotiations, for example, may qualify under § 1.291(b)(3)(iii) as receiving unsolicited information for the filing of a protest on behalf of a third party.

While §§ 1.291(b)(3)(i) through (b)(3)(iii) recognize several options that an applicant has in treating unsolicited information supplied by a third party, applicant may have other options depending on the facts of each situation. One option may be not to submit any of the information, such as where the information has been reviewed and there is no information that is material.

Third parties should recognize that, rather than send unsolicited information to an applicant, third parties may have the opportunity to submit such information directly to the Office pursuant to § 1.99.

Section 1.291(b)(4) would provide a recognition that nothing in § 1.291 is intended to relieve a person subject to § 1.56(c) from submitting to the Office information that is subject to the duty of disclosure under § 1.56. Newly proposed § 1.291(b)(3) attempts to help an applicant deal with unsolicited information supplied by a third party, particularly in view of the proposed amendment of § 1.98 requiring different explanation requirements.

Section 1.291(b)(5) would be created to contain the current provision of § 1.291(b)(2). Other than for the first protest filed in an application, a statement must accompany a protest that it is the first protest submitted in the application by the real party in interest who is submitting the protest; or the protest must comply with paragraph (c)(5) of this section.

Section 1.291(c)(2) would be revised to set forth the degree of consideration given to items of information submitted in a compliant protest. As to the ''concise explanation of the relevance of each item listed pursuant to paragraph (c)(1)'' provided by the protester, items in a compliant protest will be considered by the examiner at least to the extent of the provided explanations. See also the above discussion of the degree of consideration for §§ 1.97 and 1.98 submissions.

Section 1.312: Section 1.312 is proposed to be amended to create paragraphs (a) and (b) and to permit certain amendments filed after allowance to be entered without withdrawal of the application from issue.

Section 1.312(a)(1)(i) through (a)(1)(vi) would provide that the

following amendments if filed before or with the payment of the issue fee may be entered: (1) Amendment of the bibliographic data to be indicated on the front page of the patent; (2) amendment of the specification to add a reference to a joint research agreement (§ 1.71(g)); (3) addition of a benefit claim of a prior-filed provisional application under 35 U.S.C. 119(e), a prior-filed nonprovisional application under 35 U.S.C. 120, or a prior-filed international application that designated the United States under 35 U.S.C. 365(c) (§ 1.78); (4) addition of a priority claim of a prior foreign application under 35 U.S.C. 119(a)–(d) or (f) or 365(a) or (b) (§ 1.55); (5) changing the order or spelling of the inventors' names; or (6) changing the inventorship pursuant to § 1.48.

Any request to add a benefit claim under § 1.78, or foreign priority claim under § 1.55 pursuant to § 1.312 must comply with the requirements for timeliness, or be accompanied by a grantable petition to accept an unintentionally delayed claim for priority under § 1.78(a)(3), § 1.78(a)(6), or § 1.55(c) if needed (e.g., such a petition would not be necessary for an application filed before November 29, 2000).

Any request to change inventorship pursuant to § 1.48 must comply with all the provisions of that rule. Consequently, a § 1.48 request accompanied by a petition under § 1.183 requesting waiver of any of the requirements under § 1.48 would not qualify for entry under § 1.312.

Section 1.312(a)(2) would provide that when such amendments are filed after the date the issue fee is paid, the amendments may also be entered if submitted in sufficient time to permit the patent to be printed with the amended information (§ 1.312(a)(2)(i)), and with a processing fee pursuant to § 1.17(i) (§ 1.312(a)(2)(ii)).

Section 1.312(b) would provide that if the patent does not include the amendment filed after payment of the issue fee, the amendment would not be effective unless the patent is corrected by a certificate of correction under 35 U.S.C. 255 and § 1.323 or otherwise corrected in another post-issuance proceeding. The expression ''as appropriate'' has been used to recognize that the failure to include a benefit claim to a provisional application cannot be fixed by a certificate of correction after issue of the patent.

Section 1.555: Section 1.555(a) is proposed to be amended to delete the optional time frames for IDS submissions in reexamination proceedings appearing therein, and instead require the § 1.97 time frames. Currently, § 1.555(a) sets forth an optional time for filing an IDS, stating that it ''should be filed within two months of the date of the order for reexamination, or as soon thereafter as possible.'' Obtaining the best art in the case as soon as possible is even more important for a reexamination proceeding than for an application, because the statute mandates (35 U.S.C. 305, 35 U.S.C. 314(c)) that reexamination proceedings be ''conducted with special dispatch within the Office.'' Thus, § 1.555(a) would be amended to track application time frames by incorporating the § 1.97 time frames (and revising § 1.97 to refer to reexamination proceedings, as above discussed). Currently, § 1.555(a) requires filing of an IDS with the items listed in § 1.98(a). Section 1.555(a) would likewise be amended to track applications and require compliance with all the requirements of § 1.98, rather than only § 1.98(a). Accordingly, it is proposed that the last sentence of § 1.555(a) be amended to read: ''Any IDS must be filed with the items listed in, and pursuant to the requirements of, § 1.98 as applied to individuals associated with the patent owner in a reexamination proceeding, and must be filed within the time frames set forth in § 1.97.''

Section 1.948: Section 1.948 is proposed to be amended to set forth that the provisions of § 1.98 would apply to a third party requester of an *inter partes* reexamination in a manner analogous to the manner that § 1.98 would apply to the patent owner. It is reasonable that the requirements of § 1.98 be applied to the third party requester in a reexamination proceeding, since the considerations and burdens on the Office that exist with respect to an IDS submitted by a third party requester are the same as those for a patent owner. Additionally, the third party requester is in the best position to provide the explanations required in § 1.98 for the information that it cites.

It is to be noted that there is no need to apply § 1.98 to a reexamination requester as to the request for *ex parte* reexamination pursuant to § 1.510 or the request for *inter partes* reexamination pursuant to § 1.915, since the requirements for explaining the art/information cited vis-à-vis the claims in the request are already at least as comprehensive as the explanation requirements of § 1.98. Also, the requirements for explaining the art/information cited in a reexamination request applies to all of the art/information cited, as opposed to the requirements in § 1.98 that only apply to certain documents, or to all the art after a threshold number of documents has been cited.

Rulemaking Considerations

Administrative Procedure Act

The changes in this notice relate solely to the procedures to be followed in submitting information for consideration by the Office during the examination of an application for patent or reexamination of a patent. Non-compliance with these rules results only in the Office possibly not considering information in an information disclosure statement. If an applicant (or patentee in a patent under reexamination) submits an information disclosure statement that does not comply with these rules, the Office will either notify the applicant and provide a time limit within which the information disclosure statement may be corrected (37 CFR 1.98(f)), or advise the applicant that the information disclosure statement has been placed in the application or reexamination file with the non-complying information not being considered (MPEP 609.05(a)). The failure to correct an information disclosure statement within such a time limit does not result in abandonment of the application, but only in the Office advising the applicant that the information disclosure statement has been placed in the application or reexamination file with the non-complying information not being considered (MPEP 609.05(a)). Therefore, these proposed rule changes involve rules of agency practice and procedure under 5 U.S.C. 553(b)(A). *See Bachow Communications Inc.* v. *FCC*, 237 F.3d 683, 690 (D.C. Cir. 2001) (rules governing an application process are ''rules of agency organization, procedure, or practice'' and are exempt from the Administrative Procedure Act's notice and comment requirement) and *JEM Broadcasting Co.* v. *FCC*, 22 F.3d 320, 327 (D.C. Cir. 1994) (rule under which any flawed application is summarily dismissed without allowing the applicant to correct its error is merely procedural despite its sometimes harsh effects on applicants); *see also Merck & Co., Inc.* v. *Kessler*, 80 F.3d 1543, 1549–50, 38 USPQ2d 1347, 1351 (Fed. Cir. 1996) (the rules of practice promulgated under the authority of former 35 U.S.C. 6(a) (now in 35 U.S.C. 2(b)(2)) are not substantive rules (to which the notice and comment requirements of the Administrative Procedure Act apply)), and *Fressola* v. *Manbeck*, 36 USPQ2d 1211, 1215 (D.D.C. 1995) (''it is extremely doubtful whether any of the rules formulated to govern patent or trade-mark practice are

other than ''interpretive rules, general statements of policy, * * * procedure, or practice.' '') (quoting C.W. Ooms, *The United States Patent Office and the Administrative Procedure Act*, 38 Trademark Rep. 149, 153 (1948)). Accordingly, prior notice and opportunity for public comment are not required pursuant to 5 U.S.C. 553(b) or (c) (or any other law). Nevertheless, the Office is providing this opportunity for public comment on the changes proposed in this notice because the Office desires the benefit of public comment on these proposed changes.

Regulatory Flexibility Act

As prior notice and an opportunity for public comment are not required pursuant to 5 U.S.C. 553 (or any other law), neither an initial regulatory flexibility analysis nor a certification under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) are required. *See* 5 U.S.C. 603.

Executive Order 13132

This rulemaking does not contain policies with federalism implications sufficient to warrant preparation of a Federalism Assessment under Executive Order 13132 (Aug. 4, 1999).

Executive Order 12866

This rulemaking has been determined to be not significant for purposes of Executive Order 12866 (Sept. 30, 1993).

Paperwork Reduction Act

This notice involves information collection requirements which are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). The collections of information involved in this notice have been reviewed and previously approved by OMB under OMB control numbers 0651–0031. This notice proposes changes to the rules of practice to change the provisions for information disclosure statements to require additional disclosure when citations exceed a set number, a citation exceeds a set number of pages, a citation is in a foreign language, or a citation is not timely submitted prior to the Office examining the application, and eliminate the fee requirements for submitting an IDS, as well as eliminating the applicant's ability to file an IDS prior to the close of prosecution just by paying a fee. The proposed changes will enable the examiner to focus on the relevant portions of submitted information at the very beginning of the examination process, give higher quality first actions, and minimize wasted steps. The United States Patent and Trademark Office is resubmitting an information collection package to OMB for its review and approval because the changes in this notice affect the information collection requirements associated with the information collection under OMB control number 0651–0031.

The title, description and respondent description of these information collections are shown below with an estimate of the annual reporting burdens. Included in the estimate is the time for reviewing instructions, gathering and maintaining the data needed, and completing and reviewing the collections of information.

OMB Number: 0651–0031.

Title: Patent Processing (Updating).

Form Numbers: PTO/SB/08, PTO/SB/17i, PTO/SB/17P, PTO/SB/21–27, PTO/SB/24A, PTO/SB/24B, PTO/SB/30–32, PTO/SB/35–39, PTO/SB/42–43, PTO/SB/61–64, PTO/SB/64a, PTO/SB/67–68, PTO/SB/91–92, PTO/SB/96–97, PTO–2053–A/B, PTO–2054–A/B, PTO–2055–A/B, PTOL 413A.

Type of Review: Approved through July of 2006.

Affected Public: Individuals or Households, Business or Other For-Profit Institutions, Not-for-Profit Institutions, Farms, Federal Government and State, Local and Tribal Governments.

Estimated Number of Respondents: 2,317,539.

Estimated Time Per Response: 1.8 minutes to 12 hours.

Estimated Total Annual Burden Hours: 2,807,641 hours.

Needs and Uses: During the processing of an application for a patent, the applicant/agent may be required or desire to submit additional information to the United States Patent and Trademark Office concerning the examination of a specific application. The specific information required or which may be submitted includes: Information Disclosures and documents, requests for extensions of time, the establishment of small entity status, abandonment and revival of abandoned applications, disclaimers, appeals, expedited examination of design applications, transmittal forms, requests to inspect, copy and access patent applications, publication requests, and certificates of mailing, transmittals, and submission of priority documents and amendments.

Interested persons are requested to send comments regarding these information collections, including suggestions for reducing this burden, to: (1) The Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10202, 725 17th Street, NW., Washington, DC 20503, Attention: Desk Officer for the Patent and Trademark Office; and (2) Robert J. Spar, Director, Office of Patent Legal Administration, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313–1450.

Notwithstanding any other provision of law, no person is required to respond to nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a currently valid OMB control number.

List of Subjects in 37 CFR Part 1

Administrative practice and procedure, Courts, Freedom of Information, Inventions and patents, Reporting and recordkeeping requirements, Small businesses.

For the reasons set forth in the preamble, 37 CFR Part 1 is proposed to be amended as follows:

PART 1—RULES OF PRACTICE IN PATENT CASES

1. The authority citation for 37 CFR Part 1 continues to read as follows:

Authority: 35 U.S.C. 2(b)(2).

2. Section 1.17 is amended by revising paragraphs (h) and (p) to read as follows:

§ 1.17 Patent application and reexamination processing fees.

* * * * *

(h) For filing a petition under one of the following sections which refers to this paragraph: $130.00

§ 1.19(g)—to request documents in a form other than provided in this part.

§ 1.84—for accepting color drawings or photographs.

§ 1.91—for entry of a model or exhibit.

§ 1.98(a)(3)(iii)(B)—for filing a petition to withdraw a reexamination proceeding from the publication process.

§ 1.102(d)—to make an application special.

§ 1.138(c)—to expressly abandon an application to avoid publication.

§ 1.313—to withdraw an application from issue.

§ 1.314—to defer issuance of a patent.

* * * * *

(p) For a submission under § 1.99(b): $180.00

* * * * *

3. Section 1.48 is amended by revising its heading and paragraph (h), and by adding a new paragraph (k) to read as follows:

§ 1.48 Correction of inventorship in a patent application, other than a reissue application, pursuant to 35 U.S.C. 116, a change in the order of the inventors' names, or a change in the spelling, or an updating of an inventor's name.

* * * * *

(h) *Reissue applications and reexamination proceedings not covered.* The provisions of this section do not apply to reissue applications or to reexamination proceedings. See §§ 1.171 and 1.175 for correction of inventorship in a patent via a reissue application. See § 1.530(l) for correction of inventorship in a patent via an *ex parte* or *inter partes* reexamination proceeding.

* * * * *

(k) *Certain changes of inventors' names (excluding reissue applications and patents*). When accompanied by the appropriate processing fee pursuant to § 1.17(i) or (q), a request, which should also be accompanied by a supplemental application data sheet pursuant to § 1.76 for changes in a nonprovisional application, may be submitted to:

(1) Change the order of the inventors' names to another specified order in a pending application, except in provisional applications;

(2) Change the spelling of an inventor's name; or

(3) Update an inventor's name when it has changed after the application has been filed, where this request is also accompanied by:

(i) An affidavit signed with both names and setting forth the procedure whereby the change of name was effected; or

(ii) A certified copy of a court order for name change.

4. Section 1.55 is amended by revising paragraph (a)(2) to read as follows:

§ 1.55 Claim for foreign priority.

(a) * * *

(2) The claim for priority and the certified copy of the foreign application specified in 35 U.S.C. 119(b) or PCT Rule 17 must, in any event be filed before the patent is granted. If the claim for priority or the certified copy of the foreign application is filed after the date the issue fee is paid, it must be accompanied by the processing fee set forth in § 1.17(i). If the patent did not publish with the priority claim, the amendment adding the priority claim will not be effective unless corrected by a certificate of correction under 35 U.S.C. 255 and § 1.323.

* * * * *

5. Section 1.56 is amended by adding new paragraph (f) to read as follows:

§ 1.56 Duty to disclose information material to patentability.

* * * * *

(f) The additional disclosure requirements for documents in § 1.98(a)(3) would be deemed satisfied where a § 1.56(c) individual has made reasonable inquiry of the relationship of the documents cited in an information disclosure statement to the claimed invention, including the supporting specification, and the individual has acted in good faith to comply with the disclosure requirements by having a reasonable basis for the statements made in such disclosure.

6. Section 1.97 is revised to read as follows:

§ 1.97 Filing of information disclosure statements.

(a) *General.* In order for an applicant for a patent, or for a reissue of a patent, or a patent owner in a reexamination proceeding, to have an information disclosure statement considered by the Office during the pendency of the application, or the reexamination proceeding, the information disclosure statement must satisfy the requirements of § 1.98 specific to the time period of submission of the information disclosure statement as set forth in one of paragraphs (b) through (d) of this section.

(b) *First time period:* Within one of the following time frames:

(1) Three months from the filing date of a national application under 35 U.S.C. 111(a) other than a continued prosecution application under § 1.53(d), or three months from the filing date of a request for reexamination under § 1.510 or § 1.915;

(2) Three months from the date of entry of the national stage as set forth in § 1.491 in an international application; or

(3) Before the mailing of a first Office action on the merits.

(c) *Second time period:* After the period specified in paragraph (b) of this section, and before the earlier of the mailing date of a notice of allowability or a notice of allowance under § 1.311 for an application, or of a Notice of Intent to Issue a Reexamination Certificate (NIRC) for a reexamination proceeding.

(d)(1) *Third time period:* After the period specified in paragraph (c) of this section, except for reexamination proceedings, and before or with payment of the issue fee for an application.

(2) *Fourth time period:* After payment of the issue fee for an application and in sufficient time to be considered by the examiner before issuance of the application. For a reexamination proceeding, after the period specified in paragraph (c) of this section and in sufficient time to be considered by the examiner before issuance of a Reexamination Certificate under § 1.570 or § 1.997.

(e) *Certification.* A certification under this section referenced in §§ 1.98(a)(3)(iii) and 1.98(a)(3)(viii)(B) must certify either:

(1) That each item of information contained in the information disclosure statement was first cited in any communication from a foreign patent office in a counterpart foreign application not more than three months prior to the filing of the information disclosure statement; or

(2) That no item of information contained in the information disclosure statement was cited in a communication from a foreign patent office in a counterpart foreign application, and, to the knowledge of the person signing the certification after making reasonable inquiry, no item of information contained in the information disclosure statement was known to any individual designated in § 1.56(c) more than three months prior to the filing of the information disclosure statement.

(f) *Extensions.* No extensions of time for filing an information disclosure statement are permitted under § 1.136, § 1.550 or § 1.956.

(g) *Search.* An information disclosure statement filed in accordance with § 1.98 shall not be construed as a representation that a search has been made.

(h) *Admissions.* The filing of an information disclosure statement shall not be construed to be an admission that the information cited in the statement is, or is considered to be, material to patentability as defined in § 1.56(b).

(i) *Noncompliance.* (1) If an information disclosure statement does not comply with this section and § 1.98 (see also § 1.98(a)(3)(vii)(C)), it will be placed in the file but will not be considered by the Office.

(2) If a *bona fide* attempt is made to comply with § 1.98, but part of the required content is inadvertently omitted, additional time may be granted, within the sole discretion of the Office, to enable full compliance.

(j) *Withdrawal.* An information disclosure statement submitted under paragraph (d)(2) of this section will not by itself be effective to withdraw an application from issue, or a reexamination proceeding from the publication procedure for a Reexamination Certificate.

7. Section 1.98 is revised to read as follows:

§ 1.98 Content of information disclosure statements.

(a) *General.* Any information disclosure statement filed under § 1.97 shall comply with the items listed in paragraphs (a)(1), (a)(2), and (a)(3) of this section.

(1) *Listing of items:* A list is required of all patents, publications, applications, or other information submitted to the Office for consideration. U.S. patents and U.S. patent application publications must be listed in a section separately from citations of other documents. Each page of the list must include:

(i) The application/proceeding number, if known, of the application/proceeding in which the information disclosure statement is being submitted;

(ii) A column that provides a space, next to each document to be considered, for the examiner's initials, and

(iii) A heading that clearly indicates that the list is an information disclosure statement.

(2) *Copies of items requirements:* A legible copy must be submitted of:

(i) Each foreign patent;

(ii) Each publication or that portion which caused it to be listed, other than U.S. patents and U.S. patent application publications unless required by the Office;

(iii) Each pending or abandoned U.S. application, or that portion which caused it to be listed including any amended claims directed to that portion, unless the cited pending or abandoned U.S. application is in the Office's image file wrapper system. If the cited pending or abandoned U.S. application is in the Office's image file wrapper system, a copy of the application's specification, including the claims, and drawings is not required; and

(iv) All other information or that portion which caused it to be listed.

(3) *Additional disclosure requirements:* (i) The following submitted during the time period defined in § 1.97(b) require the explanation in compliance with paragraph (a)(3)(iv) of this section, except for documents meeting one of the exceptions of paragraphs (a)(3)(viii)(A) and (a)(3)(viii)(C) of this section:

(A) Foreign language documents (see also paragraph (a)(3)(xi) of this section),

(B) Any document over twenty-five pages, excluding sequence listings, or computer program listings, pursuant to § 1.52(e)(1), and

(C) All of the documents, if more than twenty documents are submitted, calculated cumulatively.

(ii) All documents cited in an information disclosure statement submitted during the time period defined in § 1.97(c) require the explanation in compliance with paragraph (a)(3)(iv) of this section and the non-cumulative description in compliance with paragraph (a)(3)(v) of this section, except for documents meeting one of the exceptions of paragraphs (a)(3)(viii)(B) and (a)(3)(viii)(C) of this section.

(iii) All documents cited in an information disclosure statement submitted during the time periods defined in §§ 1.97(d)(1) and (d)(2) require a certification pursuant to § 1.97(e)(1) or (e)(2) and must meet one of the following:

(A) When the information disclosure statement is submitted during the time period defined in § 1.97(d)(1), compliance is required with either patentability justification pursuant to either paragraph (a)(3)(vi)(A) or (a)(3)(vi)(B) of this section; or

(B) When submitted during the time period defined in § 1.97(d)(2), the information disclosure statement must be accompanied by a petition to withdraw an application from issue pursuant to § 1.313(c)(1), or a reexamination proceeding from publication pursuant to this paragraph and the fee set forth in § 1.17(h), and the patentability justification pursuant to paragraph (a)(3)(vi)(B) of this section.

(iv) *Explanation:* An explanation must include:

(A) *Identification:* Identification of specific feature(s), showing(s), or teaching(s) that caused a document to be cited, and a representative portion(s) of the document where the specific feature(s), showing(s), or teaching(s) may be found; and

(B) *Correlation:* A correlation of the specific feature(s), showing(s), or teaching(s) identified in paragraph (a)(3)(iv)(A) of this section to corresponding specific claim language, or to a specific portion(s) of the specification that provides support for the claimed invention, where the document is cited for that purpose.

(v) *Non-cumulative description:* A non-cumulative description requires a description of how each document is not merely cumulative of any other information disclosure statement cited document, document cited by the examiner, or document cited under §§ 1.99, or 1.291, as citation of merely cumulative information must be avoided pursuant to paragraph (c) of this section. The description may be of a specific feature, showing, or teaching in a document that is not found in any other document of record. Note the exceptions set forth in paragraphs (a)(3)(viii)(B) and (a)(3)(viii)(C) of this section.

(vi) *Patentability justification:* A patentability justification requires either:

(A) An explanation pursuant to paragraph (a)(3)(iv) of this section, a non-cumulative description pursuant to paragraph (a)(3)(v) of this section, and reasons why the independent claims are patentable over the information in the information disclosure statement being submitted, considered together, and in view of any information already of record; or

(B) An explanation pursuant to paragraph (a)(3)(iv) of this section, a non-cumulative description pursuant to paragraph (a)(3)(v) of this section, and reasons why an amendment causes claims, admitted to be unpatentable over the information in the submitted information disclosure statement, either alone or in combination with any information already of record, to now be patentable over such information when considered together, and in view of any information already of record.

(vii) *Meaningful compliance:* (A) The explanations pursuant to paragraph (a)(3)(iv) of this section must include a level of specificity commensurate with specifics of the feature(s), showing(s), or teaching(s) which caused the document to be cited. These explanations must not be *pro forma* types of explanations. The non-cumulative descriptions pursuant to paragraph (a)(3)(v) of this section must be significantly different so as to point out why the cited document is not merely cumulative of any other information currently being filed, or previously of record.

(B) The reasons for patentability justification presented pursuant to paragraph (a)(3)(vi) of this section must discuss specific claim language relative to the specific feature(s), showing(s), or teaching(s) of specific documents that are being cited, or already of record.

(C) If the explanations or non-cumulative descriptions do not comply with (a)(3)(vii)(A) of this section, or the reasons for patentability justification do not comply with (a)(3)(vii)(B) of this section, the Office may decline to consider the information disclosure statement. See also § 1.97(i)(1).

(viii) *Exceptions:* (A) Compliance with paragraph (a)(3)(iv) of this section is not required for documents cited within a time frame set forth in § 1.97(b) that result from a foreign search or examination report where a copy of the report is submitted with the information disclosure statement.

(B) Compliance with paragraphs (a)(3)(iv) and (a)(3)(v) of this section is not required for documents cited within

the time frame set forth in § 1.97(c) when submitted with a certification pursuant to § 1.97(e)(1) and a copy of the foreign search or examination report.

(C) Compliance with paragraphs (a)(3)(iv) and (a)(3)(v) of this section is not required for documents submitted in reply to a requirement for information pursuant to § 1.105.

(ix) *Updating:* With each amendment to the claims or the specification affecting the scope of the claims, other than an examiner's amendment, filed after an information disclosure statement:

(A) The required explanation under paragraph (a)(3)(iv) of this section for all previous information disclosure statements must be reviewed and updated where necessary in view of the amendment(s); or

(B) A statement must be supplied to the effect that updating of the previous explanation(s) submitted with information disclosure statement(s) is not needed.

(x) *Format of additional disclosure:* The additional disclosure requirements pursuant to paragraph (a)(3) of this section, may be supplied as an attachment to the list in paragraph (a)(1) of this section, or included in the application specification with the page(s) and lines of specification where it is incorporated being noted in the list (similar to the treatment of non-English documents) or partially provided in each.

(xi) *Translations:* For Non-English language documents of any length, a copy of a translation in English thereof must be submitted along with the document where a translation is within the possession, custody, or control of, or is readily available to, any individual listed in § 1.56(c). A translation does not count towards the cumulative total of paragraph (a)(3)(i)(C) of this section, but is subject to the over twenty-five page threshold value of paragraph (a)(3)(i)(B) of this section.

(b) *Content of Listing:* (1) Each U.S. patent listed in an information disclosure statement must be identified by the inventor(s), patent number, and issue date.

(2) Each U.S. patent application publication listed in an information disclosure statement must be identified by the applicant(s), patent application publication number, and publication date.

(3) Each U.S. patent application listed in an information disclosure statement must be identified by the applicant(s), application number, and filing date.

(4) Each foreign patent or published foreign patent application listed in an information disclosure statement must be identified by the country or patent office which issued the patent or published the application, an appropriate document number, and the publication date indicated on the patent or published application.

(5) Each publication listed in an information disclosure statement must be identified by publisher, author (if any), title, relevant pages of the publication, date, and place of publication.

(c) *Avoid cumulative information:* Citing documents that are merely cumulative of other documents cited must be avoided. The Office may decline to consider an information disclosure statement citing documents that are merely cumulative.

(d) *Information cited in prior application:* A copy of any foreign patent, publication, pending or abandoned U.S. application or other information, as specified in paragraph (a)(2) of this section, listed in an information disclosure statement is required to be provided, even if the patent, publication, pending or abandoned U.S. application or other information was previously submitted to, or cited by, the Office in an earlier application (containing an earlier information disclosure statement), unless:

(1) The earlier application is properly identified in the (later submitted) information disclosure statement and the earlier application (containing the earlier submitted or cited information) is relied on in the application in which the information disclosure statement is submitted for an earlier effective filing date under 35 U.S.C. 120; and

(2) The information disclosure statement submitted in the earlier application complied with paragraphs (a)(1), (a)(2) and (b) of this section.

8. Section 1.99 is amended by revising paragraphs (a) and (e) to read as follows:

§ 1.99 Third-party submission in published application.

(a) A submission by a member of the public other than a § 1.56(c) individual (*i.e.*, a submission from a third party) of patents or publications relevant to a pending published application may be entered in the application file if the submission complies with the requirements of this section and the application is still pending when the submission and application file are brought before the examiner. A submission under this section must be filed within six months from the date of publication of the application (§ 1.215(a)), or prior to the mailing of a notice of allowance (§ 1.311), whichever is earlier.

* * * * *

(e) A submission by a member of the public to a pending published application that does not comply with the requirements of this section will not be entered.

* * * * *

9. Section 1.291 is amended by revising paragraphs (b) and (c)(2) to read as follows:

§ 1.291 Protests by the public against pending applications.

* * * * *

(b)(1) *Entry:* The protest will be entered into the record of the application if:

(i) It complies with paragraph (c) of this section;

(ii) The protest has been served upon the applicant in accordance with § 1.248, or filed with the Office in duplicate in the event such service is not possible; and

(iii) The protest was filed prior to the date the application was published under § 1.211, or a notice of allowance under § 1.311 was mailed, whichever occurs first, or alternatively, the applicant has provided written consent to the protest pursuant to paragraph (b)(2) of this section.

(2) *Applicant consent and protester statement:* (i) If a protest is accompanied by the written consent of the applicant, or such written consent is of record in the application, the protest will be considered if the protest is matched with the application in time to permit review during prosecution of the application.

(ii) A consent may be limited only insofar as it may expressly designate the length of time for which the consent is in effect, at least thirty days, and a specific party who can file a protest. Any other limitation will not be given effect.

(iii) Any protest filed based upon a consent under paragraph (b)(2) of this section must contain a statement that the submitted protest is based on the written consent of the applicant and falls within the terms of the consent.

(3) *Unsolicited information:* Upon receiving unsolicited information from a party other than a § 1.56(c) individual (*i.e.*, from a third party), an applicant may exercise one of the following options:

(i) *Submit as an information disclosure statement:* Submit the unsolicited information as an information disclosure statement, provided there is compliance with §§ 1.97 and 1.98.

(ii) *Provide consent:* Provide a written consent pursuant to paragraph (b)(2) of this section to the third party, if known, for that third party to file the unsolicited information with the Office as (part of) a protest. If the third party is unknown, the written consent to the submission of a protest may be filed in the application.

(iii) *Submit as a protest:* Submit the unsolicited information to the Office as a protest on behalf of the third party, provided there is compliance with this section (other than paragraph (b)(1)(ii) of this section), including the requirements of paragraph (c) of this section. A submission by applicant of the unsolicited information under this paragraph, as a protest on behalf of the third party, shall be deemed a consent to the protest pursuant to paragraph (b)(2) of this section.

(4) *Material information:* Nothing in this section is intended to relieve a person subject to § 1.56(c) from submitting to the Office information that is subject to the duty of disclosure under § 1.56.

(5) *First protest statement:* A statement must accompany a protest that it is the first protest submitted in the application by the real party in interest who is submitting the protest; or the protest must comply with paragraph (c)(5) of this section. This paragraph does not apply to the first protest filed in an application.

(c) * * *

(2) A concise explanation of the relevance of each item listed pursuant to paragraph (c)(1) of this section. Items in a compliant protest will be considered by the examiner at least to the extent of the provided explanations;

* * * * *

10. Section 1.312 is revised to read as follows:

§ 1.312 Amendments after allowance.

(a) No amendment may be made as a matter of right in an application after the mailing of the notice of allowance, except as provided in paragraphs (a)(1) and (a)(2) of this section. Any amendment in addition to those provided in paragraphs (a)(1) and (a)(2) of this section may be entered on the recommendation of the primary examiner, approved by the Director. Any amendment entered pursuant to this section may be made without withdrawing the application from issue.

(1) *Amendments filed before or with the payment of the issue fee:* The following amendments may be entered when filed after allowance but before or with payment of the issue fee:

(i) Amendment of the bibliographic data to be indicated on the front page of the patent;

(ii) Amendment of the specification to add a reference to a joint research agreement (§ 1.71(g));

(iii) Addition of a benefit claim of a prior-filed provisional application under 35 U.S.C. 119(e), a prior-filed nonprovisional application under 35 U.S.C. 120, or a prior-filed international application that designated the United States under 35 U.S.C. 365(c) (§ 1.78), subject to any petition required pursuant to § 1.78;

(iv) Addition of a priority claim of a prior foreign application under 35 U.S.C. 119(a) through (d) or (f) or 365(a) or (b) (§ 1.55), subject to any petition required pursuant to § 1.55;

(v) Changing the order of the inventors' names, the spelling of an inventor's name, or the name of an inventor, pursuant to § 1.48(k); or

(vi) Changing the inventorship pursuant to § 1.48.

(2) *Amendments filed after the date the issue fee is paid:* The amendments identified in paragraph (a)(1) of this section may be entered when filed after the date the issue fee is paid provided:

(i) The amendments are submitted in sufficient time to permit the patent to be printed with the amended information, and

(ii) The processing fee set forth in § 1.17(i) is submitted.

(b) If the patent does not include the amendment filed after payment of the issue fee, the amendment will not be effective unless the patent is corrected by a certificate of correction under 35 U.S.C. 255 and § 1.323 or otherwise corrected in another post-issuance proceeding, as appropriate.

11. Section 1.555 is amended by revising paragraph (a) to read as follows:

§ 1.555 Information material to patentability in *ex parte* reexamination and *inter partes* reexamination proceedings.

(a) A patent by its very nature is affected with a public interest. The public interest is best served, and the most effective reexamination occurs when, at the time a reexamination proceeding is being conducted, the Office is aware of and evaluates the teachings of all information material to patentability in a reexamination proceeding. Each individual associated with the patent owner in a reexamination proceeding has a duty of candor and good faith in dealing with the Office, which includes a duty to disclose to the Office all information known to that individual to be material to patentability in a reexamination proceeding. The individuals who have a duty to disclose to the Office all information known to them to be material to patentability in a reexamination proceeding are the patent owner, each attorney or agent who represents the patent owner, and every other individual who is substantively involved on behalf of the patent owner in a reexamination proceeding. The duty to disclose the information exists with respect to each claim pending in the reexamination proceeding until the claim is cancelled.

Information material to the patentability of a cancelled claim need not be submitted if the information is not material to patentability of any claim remaining under consideration in the reexamination proceeding. The duty to disclose all information known to be material to patentability in a reexamination proceeding is deemed to be satisfied if all information known to be material to patentability of any claim in the patent after issuance of the reexamination certificate was cited by the Office or submitted to the Office in an information disclosure statement in compliance with §§ 1.97 and 1.98. However, the duties of candor, good faith, and disclosure have not been complied with if any fraud on the Office was practiced or attempted or the duty of disclosure was violated through bad faith or intentional misconduct by, or on behalf of, the patent owner in the reexamination proceeding. Any information disclosure statement must be filed with the items listed in, and pursuant to the requirements of, § 1.98 as applied to individuals associated with the patent owner in a reexamination proceeding, and must be filed within the time frames set forth in § 1.97.

* * * * *

12. Section 1.948 is amended by adding paragraph (b) to read as follows:

§ 1.948 Limitations on submission of prior art by third party requester following the order for *inter partes* reexamination.

* * * * *

(b) Notwithstanding any provision of these rules, any submission of prior art or other information as set forth in § 1.98 by a third party requester must comply with the requirements of § 1.98.

Dated: June 28, 2006.

Jon W. Dudas,

Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office.

[FR Doc. 06–6027 Filed 7–7–06; 8:45 am]

BILLING CODE 3510–16–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R05–OAR–2004–IN–0006; FRL–8190–9]

Approval and Promulgation of Air Quality Implementation Plans; Indiana; NSR Reform Regulations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing partial approval of revisions to the prevention of significant deterioration (PSD) and nonattainment new source review (NSR) construction permit programs of the State of Indiana. On December 31, 2002, EPA published revisions to the federal PSD and nonattainment NSR regulations. These revisions are commonly referred to as ''NSR Reform'' regulations and became effective on March 3, 2003. These regulatory revisions include provisions for baseline emissions determinations, actual-to-future actual methodology, Plantwide Applicability Limits (PAL), Clean Units, and Pollution Control Projects (PCP).

On June 24, 2005, the United States Court of Appeals for the District of Columbia Circuit issued its ruling on challenges to the December 2002 NSR reform revisions. Although the Court did uphold most of EPA's rules, it vacated both the Clean Unit and the PCP provisions. In addition, the Court remanded to EPA provision that requires recordkeeping and reporting for sources that elect to use the actual-to-projected actual emission test only where there is a reasonable possibility that a project may result in a significant net emissions increase. IDEM is seeking partial approval for rules to implement the NSR Reform provisions that have not been vacated by the June 24, 2005, court decision. This action affects major stationary sources in Indiana that are subject to or potentially subject to the PSD or nonattainment NSR construction permit program.

DATES: Comments must be received on or before August 9, 2006.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R05–OAR–2004–IN–0006, by one of the following methods:

- *www.regulations.gov:* Follow the on-line instructions for submitting comments.
- E-mail: *blakley.pamela@epa.gov.*
- Fax: (312) 886–5824.
- Mail: Pamela Blakley, Chief, Air Permits Section, (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.
- Hand Delivery: Pamela Blakley, Chief, Air Permits Section, (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604. Such deliveries are only accepted during the Regional Office normal hours of operation, and special arrangements should be made for deliveries of boxed information. The Regional Office official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m. excluding Federal holidays.

Instructions: Direct your comments to Docket ID No. EPA–R05–OAR–2004–IN–0006. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *www.regulations.gov* or e-mail. The *www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *www.regulations.gov* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional instructions on submitting comments, go to Section I of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: All documents in the docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy at the Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. This Facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. We recommend that you telephone Sam Portanova, Environmental Engineer, at (312) 886–3189 before visiting the Region 5 office.

FOR FURTHER INFORMATION CONTACT: Sam Portanova, Environmental Engineer, Air Permits Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–3189, *portanova.sam@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document whenever ''we,'' ''us,'' or ''our'' is used, we mean EPA. This supplementary information section is arranged as follows:

I. What Should I Consider as I Prepare My Comments for EPA?

A. Submitting CBI. Do not submit this information to EPA through *www.regulations.gov* or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD–ROM that you mail to EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI). In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

B. Tips for Preparing Your Comments. When submitting comments, remember to:

1. Identify the rulemaking by docket number and other identifying information (subject heading, **Federal Register** date and page number).

2. Follow directions—The EPA may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

3. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

4. Describe any assumptions and provide any technical information and/or data that you used.

5. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

6. Provide specific examples to illustrate your concerns, and suggest alternatives.

7. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

8. Make sure to submit your comments by the comment period deadline identified.

II. What Is Being Addressed in This Document?

We are proposing to approve revisions to the PSD and nonattainment NSR construction permit programs of the State of Indiana. EPA granted full approval to Indiana's nonattainment NSR program on October 7, 1994 (59 FR 51108) and the approval became effective on December 6, 1994. EPA granted conditional full approval to Indiana's PSD program on March 3, 2003 (68 FR 9892), which became effective on April 2, 2003. Subsequently, EPA granted final full approval to Indiana's PSD program on May 20, 2004 (69 FR 29071), which became effective on July 19, 2004.

On December 31, 2002, EPA published revisions to the federal PSD and nonattainment NSR regulations in 40 CFR Parts 51 and 52 (67 FR 80186). These revisions are commonly referred to as ''NSR Reform'' regulations and became effective on March 3, 2003. These regulatory revisions include provisions for baseline emissions determinations, actual-to-future actual methodology, PALs, clean units, and PCPs. As stated in the December 31, 2002, EPA rulemaking, State and local permitting agencies must adopt and submit revisions to their part 51 permitting programs implementing the minimum program elements of that rulemaking no later than January 2, 2006 (67 FR 80240). With this submittal, Indiana requests approval of program revisions that satisfy this requirement.

IDEM submitted these regulatory revisions for parallel processing on March 22, 2004, which was prior to final adoption of the State rules. Indiana adopted the final rules on June 2, 2004. These rules were published in the Indiana Register on September 1, 2004. IDEM submitted a final request for approval of these rules into the State Implementation Plan (SIP) on September 2, 2004 and amended this request in an October 5, 2004, letter to EPA. On October 25, 2005, IDEM submitted a letter to EPA amending this request to exclude action on the Clean Unit and PCP provisions of the state rule.

III. What Are the Changes That EPA Is Approving?

Rule 1.1. General Provisions

326 2–1.1–7 (Fees)

Indiana has modified the language in 326 IAC 2–1.1–7(3)(D) to add ''comparison of control technology to BACT or LAER for purposes of a clean unit designation as described in 326 IAC 2–2.2–2 or 326 IAC 2–3.2–2'' to the existing provision requiring fees for best available control technology (BACT) or lowest achievable emission rate (LAER) control technology analyses. The federal rule does not address requirements on fees that permitting authorities may charge applicants. However, the fee requirement is consistent with the existing fee requirement for BACT and LAER analyses and does not add any additional burdens to sources seeking a BACT or LAER technology comparison for purposes of qualifying for a clean unit designation.

Indiana has added language in 326 IAC 2–1.1–7(3)(F) to require fees for establishing a PAL permit. The rule assesses a fee of $40 per ton of allowable emissions for each PAL pollutant. The federal rule does not address requirements on fees that permitting authorities may charge applicants. However, Indiana's PAL permit fee is comparable to EPA's presumptive fee rate under Title V of the Clean Air Act (the Act), which is $38.29, according to the September 17, 2004, EPA memorandum titled ''Calculation of the Part 70 Presumptive Minimum Fee Effective from September 2004 through August 2005.'' Considering the level of detail required for a PAL permit and the amount of resources that a permitting authority may devote to developing a PAL permit, which could be comparable to that of a Title V permit, a fee similar to that required under Title V is acceptable.

Rule 2. Prevention of Significant Deterioration Requirements

326 IAC 2–2–1 (Definitions)

Actual Emissions

Indiana has revised the definition of ''actual emissions'' in 326 IAC 2–2–1(b) to add the term ''regulated NSR pollutant'' (see definition below), to revise the language to specify the time frame as a ''consecutive twenty-four (24) month period,'' and to add language stating that this definition does not apply for calculating a significant emissions increase or for establishing a PAL. The revised definition of ''actual emissions'' is consistent with the definition in 40 CFR 51.166(b)(21).

Baseline Actual Emissions

Indiana has established the definition of ''baseline actual emissions'' in 326 IAC 2–2–1(e). This is consistent with the definition of ''baseline actual emissions'' in 40 CFR 51.166(b)(47).

Best Available Control Technology

Indiana has modified the definition of ''best available control technology'' in 326 IAC 2–2–1(i). The language ''maximum degree of reduction for each pollutant subject to regulation under the provisions of the CAA'' has been replaced with ''maximum degree of reduction for each regulated NSR pollutant.'' This is consistent with the definition in 40 CFR 51.166(b)(12).

Clean Unit

Indiana has established the definition of ''Clean Unit'' in 326 IAC 2–2–1(m). EPA is not taking action on this definition as it relates to the Clean Unit provision.

Continuous Emissions Monitoring System

Indiana has established the definition of ''continuous emissions monitoring system'' in 326 IAC 2–2–1(q). This is consistent with the definition of ''continuous emissions monitoring system'' in 40 CFR 51.166(b)(43).

Continuous Emissions Rate Monitoring System (CERMS)

Indiana has established the definition of ''continuous emissions rate monitoring system'' in 326 IAC 2–2–1(r). This is consistent with the definition of ''continuous emissions rate monitoring system'' in 40 CFR 51.166(b)(46).

Continuous Parameter Monitoring System (CPMS)

Indiana has established the definition of ''continuous parameter monitoring system'' in 326 IAC 2–2–1(s). This is consistent with the definition of ''continuous parameter monitoring system'' in 40 CFR 51.166(b)(45).

Emissions Unit

Indiana has modified the definition of ''emissions unit'' in 326 IAC 2–2–1(u). This definition is consistent with the definition of ''emissions unit'' in 40 CFR 51.166(b)(7). Included in both the federal and State definition is the

statement that a replacement unit is considered an existing unit under this definition. However, Indiana's rules do not define ''replacement unit,'' which is included in the federal rule at 40 CFR 51.166(b)(32). Indiana sent a letter to EPA on October 4, 2004, clarifying that the State will follow the federal definition of ''replacement unit,'' and committing to add that definition to its PSD rules in a future rulemaking.

Federally Enforceable

Indiana has established the definition of ''federally enforceable'' in 326 IAC 2–2–1(w). This is consistent with the definition of ''federally enforceable'' in 40 CFR 51.166(b)(17).

Lowest Achievable Emission Rate (LAER)

Indiana has established the definition of ''lowest achievable emission rate'' in 326 IAC 2–2–1(cc). This is consistent with the definition of ''lowest achievable emission rate'' in 40 CFR 51.165(a)(1)(xiii).

Major Modification

Indiana has revised the definition of ''major modification'' in 326 IAC 2–2–1(ee) to add provisions regarding PCPs and PALs. EPA is not taking action on 326 IAC 2–2–1(ee)(2)(H) since it is a PCP provision. The remaining portions of this definition are consistent with the definition in 40 CFR 51.166(b)(2).

Major Stationary Source

Indiana has modified the definition of ''major stationary source'' in 326 IAC 2–2–1(gg) to replace the phrase ''pollutant subject to regulation under the CAA'' with ''regulated NSR pollutant.'' This modification is consistent with the definition in 40 CFR 51.166(b)(1).

Net Emissions Increase

Indiana has modified the definition of ''net emissions increase'' in 326 IAC 2–2–1(jj) to be consistent with the definition in the federal rule. EPA is not taking action on 326 IAC 2–2–1(jj)(3)(B) since it is a clean unit provision. EPA is also not taking action on 326 IAC 2–2–1(jj)(6)(D) since it is a Clean Unit and PCP provision. The remaining portions of this definition are consistent with the definition in 40 CFR 51.166(b)(3).

Plantwide Applicability Limit (PAL)

Indiana has established the definition of ''plantwide applicability limit'' in 326 IAC 2–2–1(kk). This is consistent with the definition in 40 CFR 51.166(w)(2)(v).

Pollution Control Project (PCP)

Indiana has modified the definition of ''pollution control project'' in 326 IAC 2–2–1(ll). EPA is not taking action on this definition.

Pollution Prevention

Indiana has established the definition of ''pollution prevention'' in 326 IAC 2–2–1(mm). This is consistent with the definition in 40 CFR 51.166(b)(38).

Potential To Emit

Indiana has modified the definition of ''potential to emit'' in 326 IAC 2–2–1(nn) to change the term ''source'' to ''stationary source,'' which is consistent with the definition 40 CFR 51.166(b)(4). Indiana has also changed the term ''enforceable'' to ''enforceable as a practical matter.'' Indiana's use of the term ''enforceable'' is consistent with the decision in *Chemical Manufacturers Association* v. *EPA,* 70 F.3d 637 (D.C. Cir. 1995).

Predictive Emissions Monitoring System (PEMS)

Indiana has established the definition of ''predictive emissions monitoring system'' in 326 IAC 2–2–1(oo). This is consistent with the definition in 40 CFR 51.166(b)(44).

Prevention of Significant Deterioration Program

Indiana has established the definition of ''prevention of significant deterioration program'' in 326 IAC 2–2–1(pp). This is consistent with the definition in 40 CFR 51.166(b)(42).

Project

Indiana has established the definition of ''project'' in 326 IAC 2–2–1(qq). This is consistent with the definition in 40 CFR 51.166(b)(51).

Projected Actual Emissions

Indiana has established the definition of ''projected actual emissions'' in 326 IAC 2–2–1(qq). This is consistent with the definition in 40 CFR 51.166(b)(51).

Reasonably Available Control Technology (RACT)

Indiana has established the definition of ''reasonably available control technology'' in 326 IAC 2–2–1(tt). This is consistent with the definition in 40 CFR 51.100(o).

Regulated NSR Pollutant

Indiana has established the definition of ''regulated NSR pollutant'' in 326 IAC 2–2–1(uu). This is consistent with the definition in 40 CFR 51.166(b)(49), with the exception that some pollutants listed under 326 IAC 2–2–1(xx)(1) are also hazardous air pollutants (HAPs) listed in section 112(b) of the Act. According to the preamble to the December 31, 2002, NSR rulemaking (67 FR 80240), ''State and local agencies with an approved PSD program may continue to regulate the HAP now exempted from federal PSD by section 112(b)(6) if their PSD regulations provide an independent basis to do so. These State and local rules remain in effect unless they are revised to provide similar exemptions.'' Indiana has included these HAP pollutants in its State PSD rules since prior to the 1990 amendments to the Act, which added the 112(b) HAP exemption. Therefore, Indiana may continue regulating these pollutants in its PSD rules.

Significant

Indiana has modified the definition of ''significant'' in 326 IAC 2–2–1(xx) to change the phrase ''pollutant subject to regulation under the CAA'' to ''regulated NSR pollutant.'' This definition has also been modified to remove the reference to pollutants listed in § 112(b) of the Act because, other than pollutants already listed in 326 IAC 2–2–1(xx), § 112(b) pollutants are exempt from NSR. These changes are consistent with the definition in 40 CFR 51.166(b)(23).

Significant Emissions Increase

Indiana has established the definition of ''significant emissions increase'' in 326 IAC 2–2–1(yy). This is consistent with the definition in 40 CFR 51.166(b)(39).

Stationary Source

Indiana has modified the definition of ''stationary source'' in 326 IAC 2–2–1(zz) to change the phrase ''pollutant subject to regulation under the CAA'' to ''regulated NSR pollutant.'' This change is consistent with the definition in 40 CFR 51.166(b)(5).

Minor Revisions to Definitions

Indiana has made changes to the definitions of ''baseline area,'' ''baseline concentration,'' ''building, structure, facility, or installation,'' ''federal land manager,'' ''reactivation of a very clean coal-fired electric utility steam generating unit,'' and ''repowering'' that are grammatical in nature and do not change the substance of the definition.

326 IAC 2–2–2 (Applicability)

Indiana has modified 326 IAC 2–2–2 to include applicability provisions that are consistent with the regulatory language in 40 CFR 51.166(a)(7). EPA is not taking action on 326 IAC 2–2–2(d)(5) since it is a Clean Unit provision. EPA is also not taking action on 326 IAC 2–2–2(f) since it is a PCP provision. The remaining portions of 326 IAC 2–2–2 are

consistent with the requirements in 40 CFR 51.166(a)(7).

326 IAC 2–2–3 (Control Technology Review; Requirements)

Indiana has modified the provision for ''control technology review'' in 326 IAC 2–2–3 to change the phrase ''pollutant subject to regulation under the CAA'' to ''regulated NSR pollutant.'' This modification is consistent with federal rule language.

326 IAC 2–2–4 (Air Quality Analysis; Requirements)

Indiana has modified the air quality analysis requirements language in 326 IAC 2–2–4(a), 2–2–4(a)(3), 2–2–4(b)(2), 2–2–4(b)(2)(A), and 2–2–4(b)(2)(B) to include Clean Unit designations for emission units that have not previously received a major NSR permit (see 326 IAC 2–2.2–2). EPA is not taking action on these revisions.

326 IAC 2–2–4(a)(1) and 2–2–4(a)(2) have been modified to change the phrase ''pollutant subject to regulation under the CAA'' to ''regulated NSR pollutant.'' This rule language is consistent with the federal rule and EPA proposes approval of this revision.

326 IAC 2–2–5 (Air Quality Impact, Requirements)

Indiana has modified the air quality impact requirements language in 326 IAC 2–2–5(b) to include clean unit designations for emission units that have not previously received a major NSR permit (see 326 IAC 2–2.2–2). EPA is not taking action on the modification to 326 IAC 2–2–5(b).

326 IAC 2–2–6 (Increment Consumption; Requirements)

Indiana has made changes to 326 IAC 2–2–6 that are grammatical in nature and do not change the substance of the definition. EPA proposes to approve these changes.

326 IAC 2–2–7 (Additional Analysis; Requirements)

Indiana has modified the additional impact analysis requirements language in 326 IAC 2–2–7 to include the result of Clean Unit designations. EPA is not taking action on the modification to 326 IAC 2–2–7.

326 IAC 2–2–8 Source Obligation

Indiana has modified 326 IAC 2–2–8 to add provisions for sources electing to calculate projected actual emissions. EPA is not taking action the modified rule language in 326 IAC 2–2–8(b) which says ''other than projects at a clean unit or.''

326 IAC 2–2–8(b) specifies recordkeeping and reporting requirements for sources that elect to use the actual-to-projected actual emission test and where there is a reasonable possibility that a project may result in a significant net emissions increase. The ''reasonable possibility'' clause of this provision of the federal rule has been remanded to EPA in the June 24, 2005, D.C. Circuit Court ruling. *State of New York et al.* v. *EPA*, 413 F.3d 3 (D.C. Cir. 2005). At this time, EPA has not responded to the remand order and this provision remains a part of the federal rule. As IDEM's reasonable possibility clause is consistent with the existing federal rule and the remaining portions of 326 IAC 2–2–8 are consistent with 40 CFR 51.166(r)(6) and (7), we propose approval of 326 IAC 2–2–8.

IDEM provided a letter to EPA dated May 9, 2006, stating its intent to make any revisions to 326 IAC 2–2 necessary to incorporate and implement federal program revisions should it be necessary for EPA to take further action on the remand of 40 CFR 51.166(r)(6). In the letter, IDEM also commits to implementing the reasonable possibility provision consistent with EPA policy and guidance. EPA proposes to approve Indiana's rule with the ''reasonable possibility'' provision since Indiana will be implementing this rule provision in a manner consistent with EPA regulations, policy, and guidance.

326 IAC 2–2–10 Source Information

Indiana has modified the source information provision in 326 IAC 2–2–10 to include sources requesting a Clean Unit designation. EPA is not taking action on the modifications to 326 IAC 2–2–10.

Rule 2.2. Clean Unit Designations in Attainment Areas

As requested by IDEM in its October 25, 2005, letter, EPA is not taking action on this Clean Unit provision.

Rule 2.3. Pollution Control Project (PCP) Exclusion Procedural Requirements in Attainment Areas

As requested by IDEM in its October 25, 2005, letter, EPA is not taking action on this PCP provision.

Rule 2.4. Actuals Plantwide Applicability Limitations in Attainment Areas

326 IAC 2–2.4–1 Applicability

This section of the Indiana PSD rules regarding PAL applicability is consistent with 40 CFR 51.166(w)(1). This rule section refers sources in some source categories to the provisions in 326 IAC 2–2.6. A separate discussion of 326 IAC 2–2.6 is included in this document.

326 IAC 2–2.4–2 Definitions

This section of the Indiana PSD rules regarding definitions for PALs is consistent with 40 CFR 51.166(w)(2).

326 IAC 2–2.4–3 Permit Application Requirements

This section of the Indiana PSD rules regarding application requirements for PALs is consistent with 40 CFR 51.166(w)(3).

326 IAC 2–2.4–4 Establishing PALs; General Requirements

This section of the Indiana PSD rules regarding establishing PALs is consistent with 40 CFR 51.166(w)(4).

326 IAC 2–2.4–5 Public Participation Requirements for PALs

This section of the Indiana PSD rules regarding public participation for approval of PALs is generally consistent with 40 CFR 51.166(w)(5). However, the Indiana provision extends to PAL termination or revocation. Neither of these activities is addressed in the federal rule, but is provided for in the preamble to the federal rule (67 FR 80209). Therefore, this provision is acceptable. For further discussion on PAL termination or revocation, see the paragraph below addressing 326 IAC 2–2.4–15.

326 IAC 2–2.4–6 Establishing a 10-Year Actuals PAL Level

This section of the Indiana PSD rules regarding establishing an actuals PAL level is consistent with 40 CFR 51.166(w)(6).

326 IAC 2–2.4–7 Contents of the PAL Permit

This section of the Indiana PSD rules regarding the required contents of a PAL permit is consistent with 40 CFR 51.166(w)(7).

326 IAC 2–2.4–8 PAL Effective Period and Reopening of the PAL Permit

This section of the Indiana PSD rules regarding the effective period of a PAL permit and reopening of a PAL permit is consistent with 40 CFR 51.166(w)(8).

326 IAC 2–2.4–9 Expiration of a PAL

This section of the Indiana PSD rules regarding the expiration of a PAL permit and the subsequent requirement for a source with an expired PAL permit is consistent with 40 CFR 51.166(w)(9).

326 IAC 2–2.4–10 Renewal of a PAL

This section of the Indiana PSD rules regarding the renewal of a PAL permit is consistent with 40 CFR 51.166(w)(10).

326 IAC 2–2.4–11 Increasing a PAL During the PAL Effective Period

This section of the Indiana PSD rules regarding increases to a PAL emission limitation is consistent with 40 CFR 51.166(w)(11).

326 IAC 2–2.4–12 Monitoring Requirements for PALs

This section of the Indiana PSD rules regarding monitoring requirements for PAL sources is consistent with 40 CFR 51.166(w)(12).

326 IAC 2–2.4–13 Recordkeeping Requirements

This section of the Indiana PSD rules regarding recordkeeping requirements for PAL sources is consistent with 40 CFR 51.166(w)(13).

326 IAC 2–2.4–14 Reporting and Notification Requirements

This section of the Indiana PSD rules regarding reporting and notification requirements for PAL sources is consistent with 40 CFR 51.166(w)(14).

326 IAC 2–2.4–15 Termination and Revocation of a PAL

This section of the Indiana PSD rules outlines the process for terminating or revoking a PAL permit. The federal rule in 40 CFR 51.166 does not include specific provisions for termination or revocation. The preamble to the December 31, 2002, federal NSR rulemaking (67 FR 80209) states: ''today's final rules do not contain specific provisions related to the issue of terminating a PAL. Decisions about whether a PAL can or should be terminated will be handled between you and your reviewing authority in accordance with the requirements of the applicable permitting program.'' Indiana's requirements for termination and revocation are consistent with the requirements for expiration of a PAL in 326 IAC 2–2.4–9 and 40 CFR 51.166(w)(9).

Rule 2.6. Federal NSR Requirements for Sources Subject to Pub.L. 231–2003, Section 6, Endangered Industries

IDEM's September 2, 2004 submittal included 326 IAC 2–2.6. However, this rule had a sunset provision and expired on July 1, 2005. Since this rule is no longer in effect, EPA is not including it in this proposed partial approval.

Rule 3. Emission Offset (Nonattainment NSR)

326 IAC 2–3–1 (Definitions)

Actual Emissions

Indiana has revised the definition of ''actual emissions'' in 326 IAC 2–3–1(b) to add the term ''regulated NSR pollutant'' (see definition below), to revise the language to specify the time frame as a ''consecutive twenty-four (24) month period,'' and to add language stating that this definition does not apply for calculating a significant emissions increase or for establishing a PAL. This revision to the definition of ''actual emissions'' is consistent with the definition in 40 CFR 51.165(a)(1)(xii).

Allowable Emissions

Indiana has revised the definition of ''allowable emissions'' in 326 IAC 2–3–1(c) to replace the term ''federally enforceable'' with ''enforceable.'' Indiana's use of the term ''enforceable'' is consistent with the decision in *Chemical Manufacturers Association* v. *EPA, 70 F.3d 637* (D.C. Cir. 1995).

Baseline Actual Emissions

Indiana has established the definition of ''baseline actual emissions'' in 326 IAC 2–3–1(d). This is consistent with the definition of ''baseline actual emissions'' in 40 CFR 51.165(a)(1)(xxxv).

Best Available Control Technology

Indiana has modified the definition of ''best available control technology'' in 326 IAC 2–3–1(f). The language ''maximum degree of reduction for each pollutant subject to regulation under the provisions of the CAA'' has been replaced with ''maximum degree of reduction for each regulated NSR pollutant.'' This is consistent with the definition in 40 CFR 51.165(a)(1)(XL).

Clean Unit

Indiana has established the definition of ''Clean Unit'' in 326 IAC 2–3–1(j). EPA is not taking action on this definition as it relates to the Clean Unit provision.

Continuous Emissions Monitoring System

Indiana has established the definition of ''continuous emissions monitoring system'' in 326 IAC 2–3–1(n). This is consistent with the definition of ''continuous emissions monitoring system'' in 40 CFR 51.165(a)(1)(xxxi).

Continuous Emissions Rate Monitoring System (CERMS)

Indiana has established the definition of ''continuous emissions rate monitoring system'' in 326 IAC 2–3–1(o). This is consistent with the definition of ''continuous emissions rate monitoring system'' in 40 CFR 51.165(a)(1)(xxxiv).

Continuous Parameter Monitoring System (CPMS)

Indiana has established the definition of ''continuous parameter monitoring system'' in 326 IAC 2–3–1(p). This is consistent with the definition of ''continuous parameter monitoring system'' in 40 CFR 51.165(a)(1)(xxxiii).

Emissions Unit

Indiana has modified the definition of ''emissions unit'' in 326 IAC 2–2–1(s). This is consistent with the definition of ''emissions unit'' in 40 CFR 51.165(a)(1)(vii). Included in both the federal and State definitions is the statement that a replacement unit is considered an existing unit under this definition. However, Indiana's rules do not define ''replacement unit,'' which is included in the federal rule at 40 CFR 51.165(a)(1)(xxi). Indiana sent a letter to EPA on October 4, 2004, clarifying that the State will follow the federal definition of ''replacement unit,'' and committing to add that definition to its nonattainment NSR rules in a future rulemaking.

Federal Land Manager

Indiana has established the definition of ''Federal Land Manager'' in 326 IAC 2–3–1(t). This is consistent with the definition of ''federal land manager'' in 40 CFR 51.165(a)(1)(xlii).

Federally Enforceable

Indiana has established the definition of ''federally enforceable'' in 326 IAC 2–3–1(u). This is consistent with the definition of ''federally enforceable'' in 40 CFR 51.165(a)(1)(xiv).

Lowest Achievable Emission Rate (LAER)

Indiana has established the definition of ''lowest achievable emission rate'' in 326 IAC 2–3–1(y). This is consistent with the definition of ''lowest achievable emission rate'' in 40 CFR 51.165(a)(1)(xiii).

Major Modification

Indiana has modified the definition of ''major modification'' in 326 IAC 2–3–1(z) to add provisions regarding PCPs and PALs. EPA is not taking action on 326 IAC 2–3–1(z)(2)(h) since it is a PCP provision. The remaining portions of this definition are consistent with the definition in 40 CFR 51.165(a)(1)(v).

Net Emissions Increase

Indiana has modified the definition of ''net emissions increase'' in 326 IAC 2–3–1(dd) to be consistent with the definition in the federal rule. EPA is not taking action on 326 IAC 2–3–1(dd)(3)(B)(iii) since it is a clean unit

provision. EPA is also not taking action on 326 IAC 2–3–1(dd)(3)(B)(v)(EE) since it is a clean unit and PCP provision. The remaining portions of this definition are consistent with the definition in 40 CFR 51.165(a)(1)(vi).

Nonattainment Major New Source Review Program (NSR Program)

Indiana has established the definition of ''nonattainment major new source review program'' in 326 IAC 2–3–1(ff). This is consistent with the definition in 40 CFR 51.165(a)(1)(xxx).

Pollution Control Project (PCP)

Indiana has modified the definition of ''pollution control project'' in 326 IAC 2–3–1(gg). EPA is not taking action on this definition.

Pollution Prevention

Indiana has established the definition of ''pollution prevention'' in 326 IAC 2–3–1(hh). This is consistent with the definition in 40 CFR 51.165(a)(1)(xxvi).

Potential To Emit

Indiana has modified the definition of ''potential to emit'' in 326 IAC 2–3–1(ii) to change the term ''source'' to ''stationary source,'' which is consistent with the definition in 40 CFR 51.165(a)(1)(iii). Indiana has also changed the term ''enforceable'' to ''enforceable as a practical matter.'' Indiana's use of the term ''enforceable'' is consistent with *Chemical Manufacturers Association* v. *EPA,* 70 F.3d 637 (D.C. Cir. 1995).

Predictive Emissions Monitoring System (PEMS)

Indiana has established the definition of ''predictive emissions monitoring system'' in 326 IAC 2–3–1(jj). This is consistent with the definition in 40 CFR 51.165(a)(1)(xxxii).

Prevention of Significant Deterioration Permit

Indiana has established the definition of ''prevention of significant deterioration permit'' in 326 IAC 2–3–1(kk). This is consistent with the definition in 40 CFR 51.165(a)(1)(xli).

Project

Indiana has established the definition of ''project'' in 326 IAC 2–3–1(ll). This is consistent with the definition in 40 CFR 51.165(a)(1)(xxxix).

Projected Actual Emissions

Indiana has established the definition of ''projected actual emissions'' in 326 IAC 2–3–1(mm). This is consistent with the definition in 40 CFR 51.165(a)(1)(xxviii).

Regulated NSR Pollutant

Indiana has established the definition of ''regulated NSR pollutant'' in 326 IAC 2–3–1(oo). This is consistent with the definition in 40 CFR 51.165(a)(1)(xxxvii).

Significant Emissions Increase

Indiana has established the definition of ''significant emissions increase'' in 326 IAC 2–3–1(rr). This is consistent with the definition in 40 CFR 51.165(a)(1)(xxvii).

Stationary Source

Indiana has modified the definition of ''stationary source'' in 326 IAC 2–3–1(tt) to change the phrase ''pollutant subject to regulation under the CAA'' to ''regulated NSR pollutant.'' This change is consistent with the definition in 40 CFR 51.165(a)(1)(i).

Minor Revisions to Definitions

Indiana has made changes to the definitions of ''begin actual construction,'' ''building, structure, facility, or installation,'' ''construction,'' ''fugitive emissions,'' ''major stationary source,'' ''new,'' and ''reasonable further progress,'' that are grammatical in nature and do not change the substance of the definitions. These changes are acceptable.

326 IAC 2–3–2 (Applicability)

Indiana has added regulatory language in 326 IAC 2–3–2(c), (k), and (l) to include applicability provisions that are consistent with the regulatory language in 40 CFR 51.165(a)(2) for significant emissions increases, PALs, and PCPs, respectively. Indiana has also made other changes to 326 IAC 2–3–2 that are grammatical in nature and do not change the substance of the regulatory provision. EPA is not taking action on 326 IAC 2–3–2(c)(5) since it is a Clean Unit provision. EPA is also not taking action on 326 IAC 2–3–2(l) since it is a PCP provision.

Indiana has added 326 IAC 2–3–2(m) to include applicability provisions that are consistent with the regulatory language in 40 CFR 51.165(a)(6) and (7) for sources calculating projected actual emissions. As requested by IDEM in its October 25, 2005, letter, we are not taking action on the rule language in 326 IAC 2–3–2(m) that says ''other than projects at a clean unit or.''

326 IAC 2–3–2(m) specifies recordkeeping and reporting requirements for sources that elect to use the actual-to-projected actual emission test and where there is a reasonable possibility that a project may result in a significant net emissions increase. This provision of the federal rule has been remanded to EPA in the June 24, 2005, D.C. Circuit Court ruling. At this time, EPA has not responded to the remand order and this provision remains a part of the federal rule. At this time, EPA has not responded to the remand order and this provision remains a part of the federal rule. As IDEM's reasonable possibility clause is consistent with the existing federal rule and the remaining portions of 326 IAC 2–3–2 are consistent with the federal rule, we propose approval of 326 IAC 2–3–2.

IDEM provided a letter to EPA dated XXXX, 2006 stating its intent to make any revisions to 326 IAC 2–3 necessary to incorporate and implement federal program revisions should it be necessary for EPA to take further action on the remand of 40 CFR 51.165(a)(6). In the letter, IDEM also commits to implementing the reasonable possibility provision consistent with EPA policy and guidance. EPA proposes to approve Indiana's rule with the ''reasonable possibility'' provision since Indiana will be implementing this rule provision in a manner consistent with EPA regulations, policy, and guidance.

326 IAC 2–3–3 (Applicable Requirements)

Indiana has added the following: (1) Regulatory language in 326 IAC 2–3–3(a)(6) regarding calculating offsets that is consistent with 40 CFR 51.165(a)(3)(ii)(J); (2) regulatory language in 326 IAC 2–3–3(a)(8) regarding compliance responsibility that is consistent with 40 CFR 51.165(a)(5); (3) regulatory language in 326 IAC 2–3–3(b)(5) regarding offset credits that is consistent with 40 CFR 51.165(a)(3)(ii)(C); (4) regulatory language in 326 IAC 2–3–3(b)(12) regarding offsets from clean units or PCPs that is consistent with 40 CFR 51.165(a)(3)(ii)(H); (5) regulatory language in 326 IAC 2–3–3(b)(13) regarding offsets from clean units or PCPs that is consistent with 40 CFR 51.165(a)(3)(ii)(I); and (6) regulatory language in 326 IAC 2–3–3(b)(14) regarding emission reduction credit that is consistent with 40 CFR 51.165(a)(3)(ii)(G). Indiana has also made other changes to 326 IAC 2–3–3 that are grammatical in nature and do not change the substance of the regulatory provision.

EPA is not taking action on the modifications to 326 IAC 2–3–3(b)(12) and 326 IAC 2–3–3(b)(13) as they relate to Clean Units and PCPs. EPA proposes approval of the remaining portions of 326 IAC 2–3–3.

Rule 3.2. Clean Unit Designations in Nonattainment Areas

As requested by IDEM in its October 25, 2005, letter, EPA is not taking action on this clean unit provision.

Rule 3.3. Pollution Control Project Exclusion Procedural Requirements in Nonattainment Areas

As requested by IDEM in its October 25, 2005, letter, EPA is not taking action on this PCP provision.

Rule 3.4. Actuals Plantwide Applicability Limitations in Nonattainment Areas

326 IAC 2–3.4–1 Applicability

This section of the Indiana rules regarding PAL applicability is consistent with 40 CFR 51.165(f)(1).

This rule section refers sources in some source categories to the provisions in 326 IAC 2–2.6. A separate discussion of 326 IAC 2–2.6 is included in this document.

326 IAC 2–3.4–2 Definitions

This section of the Indiana rules regarding definitions for PALs is consistent with 40 CFR 51.165(f)(2).

326 IAC 2–3.4–3 Permit Application Requirements

This section of the Indiana rules regarding application requirements for PALs is consistent with 40 CFR 51.165(f)(3).

326 IAC 2–3.4–4 Establishing PALs; General Requirements

This section of the Indiana rules regarding establishing PALs is consistent with 40 CFR 51.165(f)(4).

326 IAC 2–3.4–5 Public Participation Requirements for PALs

This section of the Indiana rules regarding public participation for approval of PALs is generally consistent with 40 CFR 51.165(f)(5). However, the Indiana provision extends to PAL termination or revocation. Neither of these activities is addressed in the federal rule, but is provided for in the preamble to the federal rule (67 FR 80209). Therefore, this provision is acceptable. For further discussion on PAL termination or revocation, see the paragraph below addressing 326 IAC 2–3.4–15.

326 IAC 2–3.4–6 Establishing a 10-Year Actuals PAL Level

This section of the Indiana rules regarding establishing an actuals PAL level is consistent with 40 CFR 51.165(f)(6).

326 IAC 2–3.4–7 Contents of the PAL Permit

This section of the Indiana rules regarding the required contents of a PAL permit is consistent with 40 CFR 51.165(f)(7).

326 IAC 2–3.4–8 PAL Effective Period and Reopening of the PAL Permit

This section of the Indiana rules regarding the effective period of a PAL permit and reopening of a PAL permit is consistent with 40 CFR 51.165(f)(8).

326 IAC 2–3.4–9 Expiration of a PAL

This section of the Indiana rules regarding the expiration of a PAL permit and the subsequent requirement for a source with an expired PAL permit is consistent with 40 CFR 51.165(f)(9).

326 IAC 2–3.4–10 Renewal of a PAL

This section of the Indiana rules regarding the renewal of a PAL permit is consistent with 40 CFR 51.165(f)(10).

326 IAC 2–3.4–11 Increasing a PAL During the PAL Effective Period

This section of the Indiana rules regarding increasing a PAL emission limitation is consistent with 40 CFR 51.165(f)(11).

326 IAC 2–3.4–12 Monitoring Requirements for PALs

This section of the Indiana rules regarding monitoring requirements for PAL sources is consistent with 40 CFR 51.165(f)(12).

326 IAC 2–3.4–13 Recordkeeping Requirements

This section of the Indiana rules regarding recordkeeping requirements for PAL sources is consistent with 40 CFR 51.165(f)(13).

326 IAC 2–3.4–14 Reporting and Notification Requirements

This section of the Indiana rules regarding reporting and notification requirements for PAL sources is consistent with 40 CFR 51.165(f)(14).

326 IAC 2–3.4–15 Termination and Revocation of a PAL

This section of the Indiana nonattainment NSR rules outlines the process for terminating or revoking a PAL permit. The federal rule in 40 CFR 51.165 does not include specific provisions for termination or revocation. The preamble to the December 31, 2002, federal NSR rulemaking (67 FR 80209) states ''today's final rules do not contain specific provisions related to the issue of terminating a PAL. Decisions about whether a PAL can or should be terminated will be handled between you and your reviewing authority in accordance with the requirements of the applicable permitting program.'' Indiana's requirements for termination and revocation are consistent with the requirements for expiration of a PAL in 326 IAC 2–3.4–9 and 40 CFR 51.165(f)(9).

Rule 5.1. Construction of New Sources

326 IAC 2–5.1–4 Transition Procedures

This revision is not related to the New Source Review Reform regulations and is not being evaluated in comparison to the December 31, 2002, EPA rulemaking. This section of Indiana's permit rules provides a transition for construction permit sources to also obtain the proper operating permit. The previous version of this section allowed a source triggering PSD or nonattainment NSR that is also newly subject to Title V to obtain a state minor source operating permit in the interim, provided that the source submitted a Title V permit application within 12 months of the date of approval to operate. Under the revised rule, newly-subject Title V sources do not have this option and must obtain a Title V permit as specified in the Title V regulations at the time of the PSD or nonattainment NSR permit issuance. This provision is more stringent than the federal rule in that it does not provide newly subject sources the option of submitting a Title V application up to 12 months after construction permit approval. EPA proposes approval of this rule revision.

Rule 7. Part 70 Permit Program

326 IAC 2–7–11 Administrative Permit Amendments

Indiana has included in this submittal revisions to the administrative amendment provisions in 326 IAC 2–7–11(a). This regulation is a part of Indiana's Title V program and is not a part of the SIP. Therefore, EPA will not take action on this rule revision in today's proposal.

326 IAC 2–7–12 Permit Modification

Indiana has included in this submittal revisions to the minor permit modification provisions in 326 IAC 2–7–12. This regulation is a part of Indiana's Title V program and is not a part of the SIP. Therefore, EPA will not take action on this rule revision in today's proposal.

IV. What Action Is EPA Taking Today?

EPA is proposing to partially approve into the Indiana SIP the revisions to Indiana's PSD and NSR construction permits program submitted by IDEM on

September 2, 2004. These revisions meet the minimum program requirements of the December 31, 2002, EPA NSR Reform rulemaking. As requested by IDEM's October 25, 2005 letter, EPA is not taking action on the clean unit and PCP provisions of Indiana's rule.

V. Statutory and Executive Order Reviews

Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866 (*58 FR 51735*, September 30, 1993), this action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget.

Paperwork Reduction Act

This proposed rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Regulatory Flexibility Act

This proposed action merely proposes to approve state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

Unfunded Mandates Reform Act

Because this rule proposes to approve pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).

Executive Order 13132: Federalism

This action also does not have Federalism implications because it does not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely proposes to approve a state rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act.

Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

This proposed rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

Executive Order 13045: Protection of Children From Environmental Health and Safety Risks

This proposed rule also is not subject to Executive Order 13045 ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because it is not economically significant.

Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use

Because it is not a ''significant regulatory action'' under Executive Order 12866 or a ''significant energy action,'' this action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001).

National Technology Transfer Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), 15 U.S.C. 272, requires Federal agencies to use technical standards that are developed or adopted by voluntary consensus to carry out policy objectives, so long as such standards are not inconsistent with applicable law or otherwise impractical. In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Absent a prior existing requirement for the state to use voluntary consensus standards, EPA has no authority to disapprove a SIP submission for failure to use such standards, and it would thus be inconsistent with applicable law for EPA to use voluntary consensus standards in place of a program submission that otherwise satisfies the provisions of the Clean Air Act. Therefore, the requirements of section 12(d) of the NTTA do not apply.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: June 15, 2006.

Norman Niedergang,

Acting Regional Administrator, Region 5.

[FR Doc. E6–10679 Filed 7–7–06; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 70

[EPA–R07–OAR–2006–0476; FRL–8192–6]

Approval and Promulgation of Implementation Plans and Operating Permits Program; State of Nebraska

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to approve the State Implementation Plan (SIP) and Operating Permits Program revisions submitted by the state of Nebraska. This action revises monitoring requirements which were found to be less stringent than the applicable Federal rule; adds permits-by-rule provisions, which would provide a streamlined approach for issuing construction/operating permits for hot mix asphalt plants and small animal incinerators' and deletes the chemical compound ethylene glycol monobutyl ether from the list of regulated hazardous air pollutants in Appendices II and III. Approval of these revisions will ensure consistency between the state and Federally-approved rules, and ensure Federal enforceability of the state's revised air program rules.

DATES: Comments on this proposed action must be received in writing by August 9, 2006.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R07–OAR–2006–0476 by one of the following methods:

1. *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.

2. E-mail: *rios.shelly@epa.gov*.

3. Mail: Shelly Rios-LaLuz, Environmental Protection Agency, Air Planning and Development Branch, 901 North 5th Street, Kansas City, Kansas 66101.

4. Hand Delivery or Courier. Deliver your comments to: Shelly Rios-LaLuz, Environmental Protection Agency, Air Planning and Development Branch, 901 North 5th Street, Kansas City, Kansas

66101. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8 to 4:30, excluding legal holidays.

Please see the direct final rule which is located in the Rules section of this **Federal Register** for detailed instructions on how to submit comments.

FOR FURTHER INFORMATION CONTACT: Shelly Rios-LaLuz at (913) 551–7296, or by e-mail at *rios.shelly@epa.gov*.

SUPPLEMENTARY INFORMATION: In the final rules section of the **Federal Register**, EPA is approving the state's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial revision amendment and anticipates no relevant adverse comments to this action. A detailed rationale for the approval is set forth in the direct final rule. If no relevant adverse comments are received in response to this action, no further activity is contemplated in relation to this action. If EPA receives relevant adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed action. EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. Please note that if EPA receives adverse comment on part of this rule and if that part can be severed from the remainder of the rule, EPA may adopt as final those parts of the rule that are not the subject of an adverse comment. For additional information, see the direct final rule which is located in the rules section of this **Federal Register**.

Dated: June 19, 2006.

William W. Rice,

Acting Regional Administrator, Region 7.

[FR Doc. E6–10749 Filed 7–7–06; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 54

[WC Docket No. 06–122; FCC 06–94]

Universal Service Contribution Methodology

AGENCY: Federal Communications Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Communications Commission (Commission), in a companion Final Rule, proposes to amend the existing approach for assessing contributions to the federal universal service fund (USF or Fund) by raising the interim wireless safe harbor to 37.1 percent and by establishing universal service contribution obligations for providers of interconnected voice over Internet Protocol (VoIP) service. The Commission issues this Notice of Proposed Rulemaking to determine what additional steps, if any, it should take to ensure the sufficiency and stability of the Fund.

DATES: Comments are due on or before August 9, 2006, and reply comments are due on or before September 8, 2006.

ADDRESSES: You may submit comments, identified by WC Docket No. 06–122, by any of the following methods:

- Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the instructions for submitting comments.
- Agency Web Site: *www.fcc.gov.* Follow the instructions for submitting comments on *http://www.fcc.gov/cgb/ecfs/*.
- E-mail: *ecfs@fcc.gov*, and include the following words in the body of the message, ''get form.'' A sample form and directions will be sent in response.
- Mail: Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554.
- Hand Delivery/Courier: 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002.

Instructions: All submissions received must include the agency name and docket number for this rulemaking, WC Docket No. 06–122. All comments received will be posted without change to *http://www.fcc.gov/cgb/ecfs/*, including any personal information provided. For detailed instructions on submitting comments and additional information on the rulemaking process, see the ''Public Participation'' heading of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: For access to the docket to read background documents or comments received, go to *http://www.fcc.gov/cgb/ecfs/*.

FOR FURTHER INFORMATION CONTACT: Amy Bender, Wireline Competition Bureau, (202) 418–1469, or via e-mail at *Amy.Bender@fcc.gov*.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rulemaking in WC Docket No. 06–122, FCC 06–94, adopted June 21, 2006, and released June 27, 2006. The complete text of this document is available for inspection and copying during normal business hours in the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. This document may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone (800) 378–3160 or (202) 863–2893, facsimile (202) 863–2898, or via e-mail at *www.bcpiweb.com.* It is also available on the Commission's Web site at *http://www.fcc.gov.*

Public Participation

Comments may be filed using (1) the Commission's Electronic Comment Filing System (ECFS), (2) the Federal Government's eRulemaking Portal, or (3) by filing paper copies. *See* Electronic Filing of Documents in Rulemaking Proceedings, 63 FR 24121 (May 1, 1998).

- Electronic Filers: Comments may be filed electronically using the Internet by accessing the ECFS: *http://www.fcc.gov/cgb/ecfs/* or the Federal eRulemaking Portal: *http://www.regulations.gov.* Filers should follow the instructions provided on the website for submitting comments.
- For ECFS filers, if multiple docket or rulemaking numbers appear in the caption of this proceeding, filers must transmit one electronic copy of the comments for each docket or rulemaking number referenced in the caption. In completing the transmittal screen, filers should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions, filers should send an e-mail to *ecfs@fcc.gov,* and include the following words in the body of the message, ''get form.'' A sample form and directions will be sent in response.
- Paper Filers: Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.

Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

- The Commission's contractor will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236

Massachusetts Avenue, NE., Suite 110, Washington, DC 20002. The filing hours at this location are 8 a.m. to 7 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building.

- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.
- U.S. Postal Service first-class, Express, and Priority mail should be addressed to 445 12th Street, SW., Washington, DC 20554.

All filings must be addressed to the Commission's Secretary, Marlene H. Dortch, Office of the Secretary, Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554. Parties must also send a courtesy copy of their filing to Antoinette Stevens, Telecommunications Access Policy Division, Wireline Competition Bureau, Federal Communications Commission, 445 12th Street, SW., Room 5–B540, Washington, DC 20554. Antoinette Stevens's e-mail address is *Antoinette.Stevens@fcc.gov* and telephone number is (202) 418–7387.

Synopsis of the Notice of Proposed Rulemaking (NPRM)

1. In this NPRM, we seek to further refine the record concerning the interim requirements established in the companion Order published elsewhere in this issue of the **Federal Register** for mobile wireless providers and for interconnected VoIP providers, while we continue to examine more fundamental contribution methodology reform. In the Order, we increased the interim wireless safe harbor from 28.5 percent to 37.1 percent to reflect more accurately actual wireless interstate usage. We also require providers of interconnected VoIP service to contribute to the Fund, by reporting their actual interstate revenues, by using a traffic study (if approved by the Commission), or by using a safe harbor of 64.9 percent.

2. First, we seek comment on whether to eliminate or raise the interim wireless safe harbor. Wireless providers may base contributions on actual interstate and international revenues or on traffic studies conducted to approximate these revenues. In light of these options, we seek comment on whether we should eliminate the interim wireless safe harbor or whether there remains a need to perpetuate a wireless safe harbor. We seek comment on whether mobile wireless providers can, or should be able to, determine their actual interstate and international end-user revenues. If we decide to eliminate the wireless safe harbor, we seek comment on how mobile wireless providers would determine their actual usage and whether we should continue to permit wireless providers to use traffic studies. For example, the study relied on in the Order utilized originating and terminating Numbering Plan Areas (NPAs), or area codes, to identify interstate revenues. We seek comment on whether originating and terminating NPAs reflect whether a call is interstate or international. We also seek comment on whether originating and terminating cell sites could be used to determine the jurisdictional nature of a call. Are there other methods of determining jurisdiction? We ask commenters to address associated difficulties and costs of implementation. We also seek comment on whether there are unique difficulties associated with analyzing either outgoing or incoming calls, and whether it is necessary to analyze both types of calls or would, for example, out-bound calls reasonably approximate all interstate and international usage.

3. If we decide to retain a wireless safe harbor, we seek comment on whether a safe harbor of 37.1 percent for interstate and international end-user revenue is appropriate or whether the safe harbor should be raised. Given that mobile wireless providers retain the option of reporting their actual interstate end-user telecommunications revenues, we have found that setting the interim safe harbor at the high end of the market for interstate and international end-user revenue is a reasonable approach. If 37.1 percent does not reflect the high end of the market, what percentage does? Since 1998, we have increased the interim wireless safe harbor twice to reflect more accurately wireless interstate end-user revenue. We are mindful that these increases in the safe harbor percentage lagged market conditions, resulting in collecting fewer Fund contributions than market conditions would have supported. We seek comment on how to determine the safe harbor percentage to better reflect market conditions on an ongoing basis. For example, should we periodically (e.g., annually, quarterly) adjust the interim safe harbor percentage to reflect wireless interstate end-user revenue trends? If so, how would we establish these trends?

4. Second, we seek comment on the USF obligations we have established in this Order for interconnected VoIP providers. We encourage commenters to describe possible ways in which our new requirements for interconnected VoIP providers could be improved. We welcome suggestions for a permanent approach to USF contributions from interconnected VoIP providers.

5. In particular, we seek comment on whether to eliminate or change the interim safe harbor for providers of interconnected VoIP service. We ask commenters to address whether a safe harbor continues to be appropriate for providers of interconnected VoIP service. Can providers of interconnected VoIP service identify the amount of actual interstate and international, as opposed to intrastate, telecommunications they provide? If so, should we require that these providers report based on actual data? If not, is 64.9 percent the most appropriate level, or should we adjust the interim interconnected VoIP safe harbor? We ask that commenters advocating a change to the safe harbor explain the basis of their proposed revised safe harbor and how the safe harbor should be calculated.

6. *New Docket.* In this NPRM, we open a new docket—WC Docket No. 06–122. All filings made in response to this NPRM and those addressing the Commission's universal service contribution methodology rules generally, should be filed in WC Docket No. 06–122. Although we urge parties that previously filed in CC Docket Nos. 96–45, 98–171, 90–571, 92–237/NSD File No. L–00–72, 99–200, 95–116, 98–170, or WC Docket No. 04–36 on the universal service contribution methodology to re-file in new WC Docket No. 06–122, such filings nevertheless will be considered in this proceeding. CC Docket Nos. 96–45, 98–171, 90–571, 92–237/NSD File No. L–00–72, 99–200, 95–116, 98–170, and WC Docket No. 04–36 will remain open for other non-universal service contribution methodology related filings.

Initial Regulatory Flexibility Analysis

7. As required by the Regulatory Flexibility Act of 1980, as amended (RFA), the Commission has prepared the present Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities that might result from this Notice of Proposed Rulemaking (NPRM). Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the NPRM provided above. The Commission will send a copy of the NPRM, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration. In addition, the NPRM and IRFA (or summaries thereof) will be published in the **Federal Register**.

1. Need for, and Objectives of, the Proposed Rules

8. In the NPRM, we seek to further refine the record concerning the interim requirements established in the accompanying Order for mobile wireless providers and for interconnected VoIP providers, while we continue to examine more fundamental contribution methodology reform. In the Order, we increased the interim wireless safe harbor from 28.5 percent to 37.1 percent to reflect more accurately actual wireless interstate usage. We also require providers of interconnected VoIP service to contribute to the Universal Service Fund (USF or Fund). These actions are necessary to ensure the stability and sufficiency of the Fund. The objective of the NPRM is to explore whether the Commission should take additional action to meet these goals.

2. Legal Basis

9. The legal basis for any action that may be taken pursuant to the NPRM is contained in sections 1, 2, 4(i), 4(j), 201, 202, 218–220, 254, and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 151, 152, 154(i)–(j), 201, 202, 218–220, 254, and 303(r), and sections 1.1, 1.48, 1.411, 1.412, 1.415, 1.419, and 1.1200–1.1216, of the Commission's rules, 47 CFR 1.1, 1.48, 1.411, 1.412, 1.415, 1.419, 1.1200–1.1216.

3. Description and Estimate of the Number of Small Entities to Which the Proposed Rules May Apply

10. The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules. The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act. A small business concern is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA). The present NPRM might, in theory, reach a variety of industries; out of an abundance of caution, we have attempted to cast a wide net in describing categories of potentially affected small entities. We would appreciate any comment on the extent to which the various entities might be directly affected by our action.

11. *Small Businesses.* Nationwide, there are a total of approximately 22.4 million small businesses, according to SBA data.

12. *Small Organizations.* Nationwide, there are approximately 1.6 million small organizations.

13. *Small Governmental Jurisdictions.* The term ''small governmental jurisdiction'' is defined generally as ''governments of cities, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand.'' Census Bureau data for 2002 indicate that there were 87,525 local governmental jurisdictions in the United States. We estimate that, of this total, 84,377 entities were ''small governmental jurisdictions.'' Thus, we estimate that most governmental jurisdictions are small.

a. Wireline Carriers and Service Providers

14. We have included small incumbent local exchange carriers in this present RFA analysis. As noted above, a ''small business'' under the RFA is one that, inter alia, meets the pertinent small business size standard (*e.g.*, a telephone communications business having 1,500 or fewer employees), and ''is not dominant in its field of operation.'' The SBA's Office of Advocacy contends that, for RFA purposes, small incumbent local exchange carriers are not dominant in their field of operation because any such dominance is not ''national'' in scope. We have therefore included small incumbent local exchange carriers in this RFA analysis, although we emphasize that this RFA action has no effect on Commission analyses and determinations in other, non-RFA contexts.

15. *Incumbent Local Exchange Carriers (LECs).* Neither the Commission nor the SBA has developed a small business size standard specifically for incumbent local exchange services. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 1,303 carriers have reported that they are engaged in the provision of incumbent local exchange services. Of these 1,303 carriers, an estimated 1,020 have 1,500 or fewer employees and 283 have more than 1,500 employees. Consequently, the Commission estimates that most providers of incumbent local exchange service are small businesses that may be affected by our action.

16. *Competitive Local Exchange Carriers (CLECs), Competitive Access Providers (CAPs), ''Shared-Tenant Service Providers,'' and ''Other Local Service Providers.''* Neither the Commission nor the SBA has developed a small business size standard specifically for these service providers. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 769 carriers have reported that they are engaged in the provision of either competitive access provider services or competitive local exchange carrier services. Of these 769 carriers, an estimated 676 have 1,500 or fewer employees and 93 have more than 1,500 employees. In addition, 12 carriers have reported that they are ''Shared-Tenant Service Providers,'' and all 12 are estimated to have 1,500 or fewer employees. In addition, 37 carriers have reported that they are ''Other Local Service Providers.'' Of the 39, an estimated 38 have 1,500 or fewer employees and one has more than 1,500 employees. Consequently, the Commission estimates that most providers of competitive local exchange service, competitive access providers, ''Shared-Tenant Service Providers,'' and ''Other Local Service Providers'' are small entities that may be affected by our action.

17. *Local Resellers.* The SBA has developed a small business size standard for the category of Telecommunications Resellers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 143 carriers have reported that they are engaged in the provision of local resale services. Of these, an estimated 141 have 1,500 or fewer employees and two have more than 1,500 employees. Consequently, the Commission estimates that the majority of local resellers are small entities that may be affected by our action.

18. *Toll Resellers.* The SBA has developed a small business size standard for the category of Telecommunications Resellers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 770 carriers have reported that they are engaged in the provision of toll resale services. Of these, an estimated 747 have 1,500 or fewer employees and 23 have more than 1,500 employees. Consequently, the Commission estimates that the majority of toll

resellers are small entities that may be affected by our action.

19. *Payphone Service Providers (PSPs).* Neither the Commission nor the SBA has developed a small business size standard specifically for payphone services providers. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 654 carriers have reported that they are engaged in the provision of payphone services. Of these, an estimated 652 have 1,500 or fewer employees and two have more than 1,500 employees. Consequently, the Commission estimates that the majority of payphone service providers are small entities that may be affected by our action.

20. *Interexchange Carriers (IXCs).* Neither the Commission nor the SBA has developed a small business size standard specifically for providers of interexchange services. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 316 carriers have reported that they are engaged in the provision of interexchange service. Of these, an estimated 292 have 1,500 or fewer employees and 24 have more than 1,500 employees. Consequently, the Commission estimates that the majority of IXCs are small entities that may be affected by our action.

21. *Operator Service Providers (OSPs).* Neither the Commission nor the SBA has developed a small business size standard specifically for operator service providers. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 23 carriers have reported that they are engaged in the provision of operator services. Of these, an estimated 20 have 1,500 or fewer employees and three have more than 1,500 employees. Consequently, the Commission estimates that the majority of OSPs are small entities that may be affected by our action.

22. *Prepaid Calling Card Providers.* Neither the Commission nor the SBA has developed a small business size standard specifically for prepaid calling card providers. The appropriate size standard under SBA rules is for the category Telecommunications Resellers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 89 carriers have reported that they are engaged in the provision of prepaid calling cards. Of these, an estimated 88 have 1,500 or fewer employees and one has more than 1,500 employees. Consequently, the Commission estimates that the majority of prepaid calling card providers are small entities that may be affected by our action.

23. *800 and 800-Like Service Subscribers.* Neither the Commission nor the SBA has developed a small business size standard specifically for 800 and 800-like service (''toll free'') subscribers. The appropriate size standard under SBA rules is for the category Telecommunications Resellers. Under that size standard, such a business is small if it has 1,500 or fewer employees. The most reliable source of information regarding the number of these service subscribers appears to be data the Commission collects on the 800, 888, and 877 numbers in use. According to our data, at the beginning of January 2005, the number of 800 numbers assigned was 7,540,453; the number of 888 numbers assigned was 5,947,789 and the number of 877 numbers assigned was 4,805,568. We do not have data specifying the number of these subscribers that are not independently owned and operated or have more than 1,500 employees, and thus are unable at this time to estimate with greater precision the number of toll free subscribers that would qualify as small businesses under the SBA size standard. Consequently, we estimate that there are 7,540,453 or fewer small entity 800 subscribers; 5,947,789 or fewer small entity 888 subscribers; and 4,805,568 or fewer small entity 877 subscribers.

b. International Service Providers

24. *Satellite Telecommunications and Other Telecommunications.* There is no small business size standard developed specifically for providers of international service. The appropriate size standards under SBA rules are for the two broad census categories of ''Satellite Telecommunications'' and ''Other Telecommunications.'' Under both categories, such a business is small if it has $13.5 million or less in average annual receipts.

25. The first category of Satellite Telecommunications ''comprises establishments primarily engaged in providing point-to-point telecommunications services to other establishments in the telecommunications and broadcasting industries by forwarding and receiving communications signals via a system of satellites or reselling satellite telecommunications.'' For this category, Census Bureau data for 2002 show that there were a total of 371 firms that operated for the entire year. Of this total, 307 firms had annual receipts of under $10 million, and 26 firms had receipts of $10 million to $24,999,999. Consequently, we estimate that the majority of Satellite Telecommunications firms are small entities that might be affected by our action.

26. The second category of Other Telecommunications ''comprises establishments primarily engaged in (1) providing specialized telecommunications applications, such as satellite tracking, communications telemetry, and radar station operations; or (2) providing satellite terminal stations and associated facilities operationally connected with one or more terrestrial communications systems and capable of transmitting telecommunications to or receiving telecommunications from satellite systems.'' For this category, Census Bureau data for 2002 show that there were a total of 332 firms that operated for the entire year. Of this total, 259 firms had annual receipts of under $10 million and 15 firms had annual receipts of $10 million to $24,999,999. Consequently, we estimate that the majority of Other Telecommunications firms are small entities that might be affected by our action.

c. Wireless Telecommunications Service Providers

27. Below, for those services subject to auctions, we note that, as a general matter, the number of winning bidders that qualify as small businesses at the close of an auction does not necessarily represent the number of small businesses currently in service. Also, the Commission does not generally track subsequent business size unless, in the context of assignments or transfers, unjust enrichment issues are implicated.

28. *Wireless Service Providers.* The SBA has developed a small business size standard for wireless firms within the two broad economic census categories of ''Paging'' and ''Cellular and Other Wireless Telecommunications.'' Under both categories, the SBA deems a wireless business to be small if it has 1,500 or fewer employees. For the census category of Paging, Census Bureau data for 2002 show that there were 807 firms in this category that operated for the entire year. Of this total, 804 firms had employment of 999 or fewer employees, and three firms had employment of 1,000 employees or more. Thus, under this category and associated small business size standard,

the majority of firms can be considered small. For the census category of Cellular and Other Wireless Telecommunications, Census Bureau data for 2002 show that there were 1,397 firms in this category that operated for the entire year. Of this total, 1,378 firms had employment of 999 or fewer employees, and 19 firms had employment of 1,000 employees or more. Thus, under this second category and size standard, the majority of firms can, again, be considered small.

29. *Cellular Licensees.* The SBA has developed a small business size standard for wireless firms within the broad economic census category ''Cellular and Other Wireless Telecommunications.'' Under this SBA category, a wireless business is small if it has 1,500 or fewer employees. According to Commission data, 437 carriers reported that they were engaged in the provision of cellular service, Personal Communications Service (PCS), or Specialized Mobile Radio (SMR) Telephony services, which are placed together in the data. We have estimated that 260 of these are small, under the SBA small business size standard. Thus, under this category and size standard, the majority of firms can be considered small.

30. *Common Carrier Paging.* The SBA has developed a small business size standard for Paging, under which a business is small if it has 1,500 or fewer employees. According to Commission data, 375 carriers have reported that they are engaged in Paging or Messaging Service. Of these, an estimated 370 have 1,500 or fewer employees, and 5 have more than 1,500 employees. Consequently, the Commission estimates that the majority of paging providers are small entities that may be affected by our action. In addition, in the *Paging Third Report and Order*, we developed a small business size standard for ''small businesses'' and ''very small businesses'' for purposes of determining their eligibility for special provisions such as bidding credits and installment payments. A ''small business'' is an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding $15 million for the preceding three years. Additionally, a ''very small business'' is an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than $3 million for the preceding three years. The SBA has approved these small business size standards. An auction of Metropolitan Economic Area licenses commenced on February 24, 2000, and closed on March 2, 2000. Of the 985 licenses auctioned, 440 were sold. Fifty-seven companies claiming small business status won.

31. *Wireless Communications Services.* This service can be used for fixed, mobile, radiolocation, and digital audio broadcasting satellite uses. The Commission established small business size standards for the wireless communications services (WCS) auction. A ''small business'' is an entity with average gross revenues of $40 million for each of the three preceding years, and a ''very small business'' is an entity with average gross revenues of $15 million for each of the three preceding years. The SBA has approved these small business size standards. The Commission auctioned geographic area licenses in the WCS service. In the auction, held in April 1997, there were seven winning bidders that qualified as ''very small business'' entities, and one that qualified as a ''small business'' entity.

32. *Wireless Telephony.* Wireless telephony includes cellular, personal communications services (PCS), and specialized mobile radio (SMR) telephony carriers. As noted earlier, the SBA has developed a small business size standard for ''Cellular and Other Wireless Telecommunications'' services. Under that SBA small business size standard, a business is small if it has 1,500 or fewer employees. According to Commission data, 437 carriers reported that they were engaged in the provision of wireless telephony. We have estimated that 260 of these are small under the SBA small business size standard.

33. *Broadband Personal Communications Service.* The broadband Personal Communications Service (PCS) spectrum is divided into six frequency blocks designated A through F, and the Commission has held auctions for each block. The Commission defined ''small entity'' for Blocks C and F as an entity that has average gross revenues of $40 million or less in the three previous calendar years. For Block F, an additional classification for ''very small business'' was added and is defined as an entity that, together with its affiliates, has average gross revenues of not more than $15 million for the preceding three calendar years.'' These standards defining ''small entity'' in the context of broadband PCS auctions have been approved by the SBA. No small businesses, within the SBA-approved small business size standards bid successfully for licenses in Blocks A and B. There were 90 winning bidders that qualified as small entities in the Block C auctions. A total of 93 small and very small business bidders won approximately 40 percent of the 1,479 licenses for Blocks D, E, and F. On March 23, 1999, the Commission re-auctioned 347 C, D, E, and F Block licenses. There were 48 small business winning bidders. On January 26, 2001, the Commission completed the auction of 422 C and F Broadband PCS licenses in Auction No. 35. Of the 35 winning bidders in this auction, 29 qualified as ''small'' or ''very small'' businesses. Subsequent events, concerning Auction 35, including judicial and agency determinations, resulted in a total of 163 C and F Block licenses being available for grant.

34. *Narrowband Personal Communications Services.* To date, two auctions of narrowband personal communications services (PCS) licenses have been conducted. For purposes of the two auctions that have already been held, ''small businesses'' were entities with average gross revenues for the prior three calendar years of $40 million or less. Through these auctions, the Commission has awarded a total of 41 licenses, out of which 11 were obtained by small businesses. To ensure meaningful participation of small business entities in future auctions, the Commission has adopted a two-tiered small business size standard in the *Narrowband PCS Second Report and Order*. A ''small business'' is an entity that, together with affiliates and controlling interests, has average gross revenues for the three preceding years of not more than $40 million. A ''very small business'' is an entity that, together with affiliates and controlling interests, has average gross revenues for the three preceding years of not more than $15 million. The SBA has approved these small business size standards. In the future, the Commission will auction 459 licenses to serve Metropolitan Trading Areas (MTAs) and 408 response channel licenses. There is also one megahertz of narrowband PCS spectrum that has been held in reserve and that the Commission has not yet decided to release for licensing. The Commission cannot predict accurately the number of licenses that will be awarded to small entities in future auctions. However, four of the 16 winning bidders in the two previous narrowband PCS auctions were small businesses, as that term was defined. The Commission assumes, for purposes of this analysis, that a large portion of the remaining narrowband PCS licenses will be awarded to small entities. The Commission also assumes that at least some small businesses will acquire narrowband PCS licenses by

means of the Commission's partitioning and disaggregation rules.

35. *220 MHz Radio Service—Phase I Licensees.* The 220 MHz service has both Phase I and Phase II licenses. Phase I licensing was conducted by lotteries in 1992 and 1993. There are approximately 1,515 such non-nationwide licensees and four nationwide licensees currently authorized to operate in the 220 MHz band. The Commission has not developed a small business size standard for small entities specifically applicable to such incumbent 220 MHz Phase I licensees. To estimate the number of such licensees that are small businesses, we apply the small business size standard under the SBA rules applicable to ''Cellular and Other Wireless Telecommunications'' companies. This category provides that a small business is a wireless company employing no more than 1,500 persons. The Commission estimates that nearly all such licensees are small businesses under the SBA's small business size standard.

36. *220 MHz Radio Service—Phase II Licensees.* The Phase II 220 MHz service is a new service, and is subject to spectrum auctions. In the *220 MHz Third Report and Order*, we adopted a small business size standard for ''small'' and ''very small'' businesses for purposes of determining their eligibility for special provisions such as bidding credits and installment payments. This small business size standard indicates that a ''small business'' is an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding $15 million for the preceding three years. A ''very small business'' is an entity that, together with its affiliates and controlling principals, has average gross revenues that do not exceed $3 million for the preceding three years. The SBA has approved these small business size standards. Auctions of Phase II licenses commenced on September 15, 1998, and closed on October 22, 1998. In the first auction, 908 licenses were auctioned in three different-sized geographic areas: three nationwide licenses, 30 Regional Economic Area Group (EAG) Licenses, and 875 Economic Area (EA) Licenses. Of the 908 licenses auctioned, 693 were sold. Thirty-nine small businesses won licenses in the first 220 MHz auction. The second auction included 225 licenses: 216 EA licenses and 9 EAG licenses. Fourteen companies claiming small business status won 158 licenses.

37. *800 MHz and 900 MHz Specialized Mobile Radio Licenses.* The Commission awards ''small entity'' and ''very small entity'' bidding credits in auctions for Specialized Mobile Radio (SMR) geographic area licenses in the 800 MHz and 900 MHz bands to firms that had revenues of no more than $15 million in each of the three previous calendar years, or that had revenues of no more than $3 million in each of the previous calendar years, respectively. These bidding credits apply to SMR providers in the 800 MHz and 900 MHz bands that either hold geographic area licenses or have obtained extended implementation authorizations. The Commission does not know how many firms provide 800 MHz or 900 MHz geographic area SMR service pursuant to extended implementation authorizations, nor how many of these providers have annual revenues of no more than $15 million. One firm has over $15 million in revenues. The Commission assumes, for purposes here, that all of the remaining existing extended implementation authorizations are held by small entities, as that term is defined by the SBA. The Commission has held auctions for geographic area licenses in the 800 MHz and 900 MHz SMR bands. There were 60 winning bidders that qualified as small or very small entities in the 900 MHz SMR auctions. Of the 1,020 licenses won in the 900 MHz auction, bidders qualifying as small or very small entities won 263 licenses. In the 800 MHz auction, 38 of the 524 licenses won were won by small and very small entities.

38. *700 MHz Guard Band Licensees.* In the *700 MHz Guard Band Order*, we adopted a small business size standard for ''small businesses'' and ''very small businesses'' for purposes of determining their eligibility for special provisions such as bidding credits and installment payments. A ''small business'' is an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding $15 million for the preceding three years. Additionally, a ''very small business'' is an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than $3 million for the preceding three years. An auction of 52 Major Economic Area (MEA) licenses commenced on September 6, 2000, and closed on September 21, 2000. Of the 104 licenses auctioned, 96 licenses were sold to nine bidders. Five of these bidders were small businesses that won a total of 26 licenses. A second auction of 700 MHz Guard Band licenses commenced on February 13, 2001 and closed on February 21, 2001. All eight of the licenses auctioned were sold to three bidders. One of these bidders was a small business that won a total of two licenses.

39. *Rural Radiotelephone Service.* The Commission has not adopted a size standard for small businesses specific to the Rural Radiotelephone Service. A significant subset of the Rural Radiotelephone Service is the Basic Exchange Telephone Radio System (BETRS). The Commission uses the SBA's small business size standard applicable to ''Cellular and Other Wireless Telecommunications,'' i.e., an entity employing no more than 1,500 persons. There are approximately 1,000 licensees in the Rural Radiotelephone Service, and the Commission estimates that there are 1,000 or fewer small entity licensees in the Rural Radiotelephone Service that may be affected by the rules and policies adopted herein.

40. *Air-Ground Radiotelephone Service.* The Commission has not adopted a small business size standard specific to the Air-Ground Radiotelephone Service. We will use SBA's small business size standard applicable to ''Cellular and Other Wireless Telecommunications,'' i.e., an entity employing no more than 1,500 persons. There are approximately 100 licensees in the Air-Ground Radiotelephone Service, and we estimate that almost all of them qualify as small under the SBA small business size standard.

41. *Aviation and Marine Radio Services.* Small businesses in the aviation and marine radio services use a very high frequency (VHF) marine or aircraft radio and, as appropriate, an emergency position-indicating radio beacon (and/or radar) or an emergency locator transmitter. The Commission has not developed a small business size standard specifically applicable to these small businesses. For purposes of this analysis, the Commission uses the SBA small business size standard for the category ''Cellular and Other Telecommunications,'' which is 1,500 or fewer employees. Most applicants for recreational licenses are individuals. Approximately 581,000 ship station licensees and 131,000 aircraft station licensees operate domestically and are not subject to the radio carriage requirements of any statute or treaty. For purposes of our evaluations in this analysis, we estimate that there are up to approximately 712,000 licensees that are small businesses (or individuals) under the SBA standard. In addition, between December 3, 1998 and December 14, 1998, the Commission held an auction of 42 VHF Public Coast licenses in the 157.1875–157.4500 MHz (ship transmit) and 161.775–162.0125 MHz (coast transmit) bands. For

purposes of the auction, the Commission defined a ''small'' business as an entity that, together with controlling interests and affiliates, has average gross revenues for the preceding three years not to exceed $15 million dollars. In addition, a ''very small'' business is one that, together with controlling interests and affiliates, has average gross revenues for the preceding three years not to exceed $3 million dollars. There are approximately 10,672 licensees in the Marine Coast Service, and the Commission estimates that almost all of them qualify as ''small'' businesses under the above special small business size standards.

42. *Fixed Microwave Services.* Fixed microwave services include common carrier, private operational-fixed, and broadcast auxiliary radio services. At present, there are approximately 22,015 common carrier fixed licensees and 61,670 private operational-fixed licensees and broadcast auxiliary radio licensees in the microwave services. The Commission has not created a size standard for a small business specifically with respect to fixed microwave services. For purposes of this analysis, the Commission uses the SBA small business size standard for the category ''Cellular and Other Telecommunications,'' which is 1,500 or fewer employees. The Commission does not have data specifying the number of these licensees that have more than 1,500 employees, and thus is unable at this time to estimate with greater precision the number of fixed microwave service licensees that would qualify as small business concerns under the SBA's small business size standard. Consequently, the Commission estimates that there are up to 22,015 common carrier fixed licensees and up to 61,670 private operational-fixed licensees and broadcast auxiliary radio licensees in the microwave services that may be small and may be affected by the rules and policies adopted herein. We noted, however, that the common carrier microwave fixed licensee category includes some large entities.

43. *Offshore Radiotelephone Service.* This service operates on several UHF television broadcast channels that are not used for television broadcasting in the coastal areas of states bordering the Gulf of Mexico. There are presently approximately 55 licensees in this service. We are unable to estimate at this time the number of licensees that would qualify as small under the SBA's small business size standard for ''Cellular and Other Wireless Telecommunications'' services. Under that SBA small business size standard, a business is small if it has 1,500 or fewer employees.

44. *39 GHz Service.* The Commission created a special small business size standard for 39 GHz licenses—an entity that has average gross revenues of $40 million or less in the three previous calendar years. An additional size standard for ''very small business'' is: An entity that, together with affiliates, has average gross revenues of not more than $15 million for the preceding three calendar years. The SBA has approved these small business size standards. The auction of the 2,173 39 GHz licenses began on April 12, 2000 and closed on May 8, 2000. The 18 bidders who claimed small business status won 849 licenses. Consequently, the Commission estimates that 18 or fewer 39 GHz licensees are small entities that may be affected by the rules and polices adopted herein.

45. *Multipoint Distribution Service, Multichannel Multipoint Distribution Service, and ITFS.* Multichannel Multipoint Distribution Service (MMDS) systems, often referred to as ''wireless cable,'' transmit video programming to subscribers using the microwave frequencies of the Multipoint Distribution Service (MDS) and Instructional Television Fixed Service (ITFS). In connection with the 1996 MDS auction, the Commission established a small business size standard as an entity that had annual average gross revenues of less than $40 million in the previous three calendar years. The MDS auctions resulted in 67 successful bidders obtaining licensing opportunities for 493 Basic Trading Areas (BTAs). Of the 67 auction winners, 61 met the definition of a small business. MDS also includes licensees of stations authorized prior to the auction. In addition, the SBA has developed a small business size standard for Cable and Other Program Distribution, which includes all such companies generating $12.5 million or less in annual receipts. According to Census Bureau data for 1997, there were a total of 1,311 firms in this category, total, that had operated for the entire year. Of this total, 1,180 firms had annual receipts of under $10 million and an additional 52 firms had receipts of $10 million or more but less than $25 million. Consequently, we estimate that the majority of providers in this service category are small businesses that may be affected by the rules and policies adopted herein. This SBA small business size standard also appears applicable to ITFS. There are presently 2,032 ITFS licensees. All but 100 of these licenses are held by educational institutions. Educational institutions are included in this analysis as small entities. Thus, we tentatively conclude that at least 1,932 licensees are small businesses.

46. *Local Multipoint Distribution Service.* Local Multipoint Distribution Service (LMDS) is a fixed broadband point-to-multipoint microwave service that provides for two-way video telecommunications. The auction of the 1,030 Local Multipoint Distribution Service (LMDS) licenses began on February 18, 1998 and closed on March 25, 1998. The Commission established a small business size standard for LMDS licenses as an entity that has average gross revenues of less than $40 million in the three previous calendar years. An additional small business size standard for ''very small business'' was added as an entity that, together with its affiliates, has average gross revenues of not more than $15 million for the preceding three calendar years. The SBA has approved these small business size standards in the context of LMDS auctions. There were 93 winning bidders that qualified as small entities in the LMDS auctions. A total of 93 small and very small business bidders won approximately 277 A Block licenses and 387 B Block licenses. On March 27, 1999, the Commission re-auctioned 161 licenses; there were 40 winning bidders. Based on this information, we conclude that the number of small LMDS licenses consists of the 93 winning bidders in the first auction and the 40 winning bidders in the re-auction, for a total of 133 small entity LMDS providers.

47. *218–219 MHz Service.* The first auction of 218–219 MHz spectrum resulted in 170 entities winning licenses for 594 Metropolitan Statistical Area (MSA) licenses. Of the 594 licenses, 557 were won by entities qualifying as a small business. For that auction, the small business size standard was an entity that, together with its affiliates, has no more than a $6 million net worth and, after federal income taxes (excluding any carry over losses), has no more than $2 million in annual profits each year for the previous two years. In the *218–219 MHz Report and Order and Memorandum Opinion and Order*, we established a small business size standard for a ''small business'' as an entity that, together with its affiliates and persons or entities that hold interests in such an entity and their affiliates, has average annual gross revenues not to exceed $15 million for the preceding three years. A ''very small business'' is defined as an entity that, together with its affiliates and persons or entities that hold interests in such an entity and its affiliates, has average annual gross revenues not to exceed $3

million for the preceding three years. These size standards will be used in future auctions of 218–219 MHz spectrum.

48. *24 GHz—Incumbent Licensees.* This analysis may affect incumbent licensees who were relocated to the 24 GHz band from the 18 GHz band, and applicants who wish to provide services in the 24 GHz band. The applicable SBA small business size standard is that of ''Cellular and Other Wireless Telecommunications'' companies. This category provides that such a company is small if it employs no more than 1,500 persons. We believe that there are only two licensees in the 24 GHz band that were relocated from the 18 GHz band, Teligent and TRW, Inc. It is our understanding that Teligent and its related companies have less than 1,500 employees, though this may change in the future. TRW is not a small entity. Thus, only one incumbent licensee in the 24 GHz band is a small business entity.

49. *24 GHz—Future Licensees.* With respect to new applicants in the 24 GHz band, the small business size standard for ''small business'' is an entity that, together with controlling interests and affiliates, has average annual gross revenues for the three preceding years not in excess of $15 million. ''Very small business'' in the 24 GHz band is an entity that, together with controlling interests and affiliates, has average gross revenues not exceeding $3 million for the preceding three years. The SBA has approved these small business size standards. These size standards will apply to the future auction, if held.

d. Cable and OVS Operators

50. *Cable and Other Program Distribution.* The Census Bureau defines this category as follows: ''This industry comprises establishments primarily engaged as third-party distribution systems for broadcast programming. The establishments of this industry deliver visual, aural, or textual programming received from cable networks, local television stations, or radio networks to consumers via cable or direct-to-home satellite systems on a subscription or fee basis. These establishments do not generally originate programming material.'' The SBA has developed a small business size standard for Cable and Other Program Distribution, which is: All such firms having $13.5 million or less in annual receipts. According to Census Bureau data for 2002, there were a total of 1,191 firms in this category that operated for the entire year. Of this total, 1,087 firms had annual receipts of under $10 million, and 43 firms had receipts of $10 million or more but less than $25 million. Thus, under this size standard, the majority of firms can be considered small.

51. *Cable Companies and Systems.* The Commission has also developed its own small business size standards, for the purpose of cable rate regulation. Under the Commission's rules, a ''small cable company'' is one serving 400,000 or fewer subscribers, nationwide. Industry data indicate that, of 1,076 cable operators nationwide, all but eleven are small under this size standard. In addition, under the Commission's rules, a ''small system'' is a cable system serving 15,000 or fewer subscribers. Industry data indicate that, of 7,208 systems nationwide, 6,139 systems have under 10,000 subscribers, and an additional 379 systems have 10,000–19,999 subscribers. Thus, under this second size standard, most cable systems are small.

52. *Cable System Operators.* The Communications Act of 1934, as amended, also contains a size standard for small cable system operators, which is ''a cable operator that, directly or through an affiliate, serves in the aggregate fewer than 1 percent of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed $250,000,000.'' The Commission has determined that an operator serving fewer than 677,000 subscribers shall be deemed a small operator, if its annual revenues, when combined with the total annual revenues of all its affiliates, do not exceed $250 million in the aggregate. Industry data indicate that, of 1,076 cable operators nationwide, all but ten are small under this size standard. We note that the Commission neither requests nor collects information on whether cable system operators are affiliated with entities whose gross annual revenues exceed $250 million, and therefore we are unable to estimate more accurately the number of cable system operators that would qualify as small under this size standard.

53. *Open Video Services.* Open Video Service (OVS) systems provide subscription services. As noted above, the SBA has created a small business size standard for Cable and Other Program Distribution. This standard provides that a small entity is one with $13.5 million or less in annual receipts. The Commission has certified approximately 25 OVS operators to serve 75 areas, and some of these are currently providing service. Affiliates of Residential Communications Network, Inc. (RCN) received approval to operate OVS systems in New York City, Boston, Washington, D.C., and other areas. RCN has sufficient revenues to assure that they do not qualify as a small business entity. Little financial information is available for the other entities that are authorized to provide OVS and are not yet operational. Given that some entities authorized to provide OVS service have not yet begun to generate revenues, the Commission concludes that up to 24 OVS operators (those remaining) might qualify as small businesses that may be affected by the rules and policies adopted herein.

e. Internet Service Providers

54. *Internet Service Providers.* The SBA has developed a small business size standard for Internet Service Providers (ISPs). ISPs ''provide clients access to the Internet and generally provide related services such as web hosting, web page designing, and hardware or software consulting related to Internet connectivity.'' Under the SBA size standard, such a business is small if it has average annual receipts of $23 million or less. According to Census Bureau data for 2002, there were 2,529 firms in this category that operated for the entire year. Of these, 2,437 firms had annual receipts of under $10 million, and an additional 47 firms had receipts of between $10 million and $24, 999,999. Consequently, we estimate that the majority of these firms are small entities that may be affected by our action.

f. Other Internet-Related Entities

55. *Web Search Portals.* Our action pertains to VoIP services, which could be provided by entities that provide other services such as email, online gaming, web browsing, video conferencing, instant messaging, and other, similar IP-enabled services. The Commission has not adopted a size standard for entities that create or provide these types of services or applications. However, the Census Bureau has identified firms that ''operate web sites that use a search engine to generate and maintain extensive databases of Internet addresses and content in an easily searchable format. Web search portals often provide additional Internet services, such as e-mail, connections to other Web sites, auctions, news, and other limited content, and serve as a home base for Internet users.'' The SBA has developed a small business size standard for this category; that size standard is $6.5 million or less in average annual receipts. According to Census Bureau data for 2002, there were 342 firms in this category that operated for the entire year. Of these, 303 had annual receipts of under $5 million, and

an additional 15 firms had receipts of between $5 million and $9,999,999. Consequently, we estimate that the majority of these firms are small entities that may be affected by our action.

56. *Data Processing, Hosting, and Related Services.* Entities in this category ''primarily * * * provid[e] infrastructure for hosting or data processing services.'' The SBA has developed a small business size standard for this category; that size standard is $23 million or less in average annual receipts. According to Census Bureau data for 2002, there were 6,877 firms in this category that operated for the entire year. Of these, 6,418 had annual receipts of under $10 million, and an additional 251 firms had receipts of between $10 million and $24,999,999. Consequently, we estimate that the majority of these firms are small entities that may be affected by our action.

57. *All Other Information Services.* ''This industry comprises establishments primarily engaged in providing other information services (except new syndicates and libraries and archives).'' Our action pertains to VoIP services, which could be provided by entities that provide other services such as email, online gaming, web browsing, video conferencing, instant messaging, and other, similar IP-enabled services. The SBA has developed a small business size standard for this category; that size standard is $6.5 million or less in average annual receipts. According to Census Bureau data for 2002, there were 155 firms in this category that operated for the entire year. Of these, 138 had annual receipts of under $5 million, and an additional four firms had receipts of between $5 million and $9,999,999. Consequently, we estimate that the majority of these firms are small entities that may be affected by our action.

58. *Internet Publishing and Broadcasting.* ''This industry comprises establishments engaged in publishing and/or broadcasting content on the Internet exclusively. These establishments do not provide traditional (non-Internet) versions of the content that they publish or broadcast.'' The SBA has developed a small business size standard for this census category; that size standard is 500 or fewer employees. According to Census Bureau data for 2002, there were 1,362 firms in this category that operated for the entire year. Of these, 1,351 had employment of 499 or fewer employees, and six firms had employment of between 500 and 999. Consequently, we estimate that the majority of these firms are small entities that may be affected by our action.

59. *Software Publishers.* These companies may design, develop or publish software and may provide other support services to software purchasers, such as providing documentation or assisting in installation. The companies may also design software to meet the needs of specific users. The SBA has developed a small business size standard of $23 million or less in average annual receipts for all of the following pertinent categories: Software Publishers, Custom Computer Programming Services, and Other Computer Related Services. For Software Publishers, Census Bureau data for 2002 indicate that there were 6,155 firms in the category that operated for the entire year. Of these, 7,633 had annual receipts of under $10 million, and an additional 403 firms had receipts of between $10 million and $24,999,999. For providers of Custom Computer Programming Services, the Census Bureau data indicate that there were 32,269 firms that operated for the entire year. Of these, 31,416 had annual receipts of under $10 million, and an additional 565 firms had receipts of between $10 million and $24,999,999. For providers of Other Computer Related Services, the Census Bureau data indicate that there were 6,357 firms that operated for the entire year. Of these, 6,187 had annual receipts of under $10 million, and an additional 101 firms had receipts of between $10 million and $24,999,999. Consequently, we estimate that the majority of the firms in each of these three categories are small entities that may be affected by our action.

4. Description of Projected Reporting, Recordkeeping and Other Compliance Requirements

60. The NPRM addresses required USF contribution levels; these levels, plus associated routine reporting requirements, constitute compliance burdens. The NPRM seeks comment, first, on whether to eliminate or raise the interim wireless safe harbor. The NPRM asks whether mobile wireless providers can, or should be able to, determine their actual interstate and international end-user revenues. If we decide to eliminate the wireless safe harbor, the NPRM seeks comment on how mobile wireless providers would determine their actual usage and whether we should continue to permit wireless providers to use traffic studies. For example, the NPRM seeks comment on whether originating and terminating Numbering Plan Areas (NPAs) reflect whether a call is interstate or international. The NPRM also seeks comment on whether originating and terminating cell sites could be used to determine the jurisdictional nature of a call. The NPRM asks commenters to address associated difficulties and costs of implementation. The NPRM also seeks comment on whether there are unique difficulties associated with analyzing either outgoing or incoming calls, and whether it is necessary to analyze both types of calls or would, for example, out-bound calls reasonably approximate all interstate and international usage.

61. If we decide to retain a wireless safe harbor, the NPRM seeks comment on whether the new interim safe harbor of 37.1 percent for interstate and international end-user revenue is appropriate or whether the safe harbor should be raised. Given that mobile wireless providers retain the option of reporting their actual interstate end-user telecommunications revenues, we have found that setting the interim safe harbor at the high end of the market for interstate and international end-user revenue is a reasonable approach. The NPRM asks whether a safe harbor of 37.1 percent reflects a reasonable approximation of the high end of wireless interstate and international end-user usage today, and if not, what percentage does. Since 1998, the Commission has increased the interim wireless safe harbor twice to reflect more accurately wireless interstate end-user revenue. We are mindful that these increases in the safe harbor percentage lagged market conditions, resulting in collecting fewer Fund contributions than market conditions would have supported. The NPRM seeks comment on how to determine the safe harbor percentage to better reflect market conditions on an ongoing basis, and on whether the Commission should periodically (e.g., annually, quarterly) adjust the interim safe harbor percentage to reflect wireless interstate end-user revenue trends.

62. The NPRM also seeks comment on the USF obligations we have established in the Order for interconnected VoIP providers. We encourage commenters to describe possible ways in which our new requirements for interconnected VoIP providers could be improved. Given the interim nature of this order, we welcome suggestions for a permanent approach to USF contributions from interconnected VoIP providers.

63. In particular, the NPRM seeks comment on whether to eliminate or change the interim safe harbor established in the Order for providers of interconnected VoIP service.

Commenters are asked to address whether a safe harbor continues to be appropriate for providers of interconnected VoIP service, and whether providers of interconnected VoIP service can identify the amount of actual interstate and international, as opposed to intrastate, telecommunications they provide. If so, the NPRM asks whether these providers should be required to report based on actual data. If not, the NPRM seeks comment on whether 64.9 percent is the most appropriate level, or whether we should adjust the interim interconnected VoIP safe harbor. The NPRM asks that commenters advocating a change to the safe harbor explain the basis of their proposed revised safe harbor and how the safe harbor should be calculated.

5. Steps Taken To Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

64. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include (among others) the following four alternatives: (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.

65. The NPRM specifically seeks comment on whether the Commission should revise the USF obligations established for interconnected VoIP providers. In addition, the NPRM seeks comment on the appropriateness of the interim safe harbors established for wireless carriers and interconnected VoIP providers. We seek comment here on the effect the various proposals summarized above will have on small entities, and on what effect alternative rules would have on those entities. How can the Commission achieve its goal of ensuring the stability and sufficiency of the Fund while also imposing minimal burdens on small entities? What specific steps could the Commission take in this regard?

6. Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rules

66. None.

Ordering Clauses

67. Accordingly, *it is ordered* that, pursuant to sections 1, 2, 4(i), 4(j), 201, 202, 218–220, 254, and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 151, 152, 154(i)–(j), 201, 202, 218–220, 254, and 303(r), this Notice of Proposed Rulemaking in WC Docket No. 06–122 is adopted.

68. *It is further ordered* that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, shall send a copy of this Notice of Proposed Rulemaking, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 06–6060 Filed 7–7–06; 8:45 am]

BILLING CODE 6712–01–P

Notices

Federal Register
Vol. 71, No. 131
Monday, July 10, 2006

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

July 5, 2006.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), *OIRA_Submission@OMB.EOP.GOV* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720–8681.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Farm Service Agency

Title: Farm Storage Facility Loan Program.

OMB Control Number: 0560–0204.

Summary Of Collection: 7 CFR part 1436 authorizes the Farm Service Agency (FSA) to administer the Commodity Credit Corporation (CCC) Farm Storage Facility Loan Program (FSFLP). The regulations provide terms and conditions in which CCC may provide low-cost financing for producers to build or upgrade on-farm storage and handling facilities. Producers requesting loans must provide information regarding the need for farm storage capacity and the storage facility they propose to construct. The information is needed to determine if the farmer has a need for the proposed capacity and the proposed structure. FSA will collect information using several forms.

Need and Use of the Information: FSA will collect following the information from producers to establishes their eligibility for the program: financial information, credit rating, and information establishing that the structure they propose is not in conflict with local land use laws. The information is needed by CCC to make loans to farmers who have a bonafide storage need and to make loans that will be repaid on time. If the information is not collected, the producer may not receive the full benefits of the program.

Description of Respondents: Farms; Individuals or households; Business or other for-profit; State, Local or Tribal Government.

Number of Respondents: 2,000.

Frequency of Responses: Reporting: Other (once).

Total Burden Hours: 3,820.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. E6–10715 Filed 7–7–06; 8:45 am]

BILLING CODE 3410–05–P

DEPARTMENT OF AGRICULTURE

Forest Service

Siskiyou County Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Siskiyou County Resource Advisory Committee (RAC) will meet in Yreka, California, July 17, 2006. The meeting will include routine business, and presentation, discussion, and recommendation of project submissions for RAC funding.

DATES: The meeting will be held July 17, 2006, from 4 p.m. until 6 p.m.

ADDRESSES: The meeting will be held at the Yreka High School Library, Preece Way, Yreka, California.

FOR FURTHER INFORMATION CONTACT: Bob Talley, Forest RAC coordinator, Klamath National Forest, (530) 841–4423 or electronically at *rtalley@fs.fed.us*.

SUPPLEMENTARY INFORMATION: The meeting is open to the public. Public comment opportunity will be provided and individuals will have the opportunity to address the Committee at that time.

Dated: June 29, 2006.

Margaret J. Boland,

Designated Federal Official.

[FR Doc. 06–6068 Filed 7–7–06; 8:45 am]

BILLING CODE 3410–11–M

BROADCASTING BOARD OF GOVERNORS

Sunshine Act Notice

DATE AND TIME: Wednesday, July 12, 2006, 2:30–3:30 p.m.

PLACE: Cohen Building, Room 3321, 330 Independence Ave., SW., Washington, DC 20237.

CLOSED MEETING: The members of the Broadcasting Board of Governors (BBG) will meet in closed session to review and discuss a number of issues relating to U.S. Government-funded non-military international broadcasting. They will address internal procedural, budgetary, and personnel issues, as well as sensitive foreign policy issues relating to potential options in the U.S. international broadcasting field. This

meeting is closed because if open it likely would either disclose matters that would be properly classified to be kept secret in the interest of foreign policy under the appropriate executive order (5 U.S.C. 552b. (c)(1)) or would disclose information the premature disclosure of which would be likely to significantly frustrate implementation of a proposed agency action. (5 U.S.C. 552b. (c)(9)(B)) In addition, part of the discussion will relate solely to the internal personnel and organizational issues of the BBG or the International Broadcasting Bureau. (5 U.S.C. 552b. (c)(2) and (6))

FOR FURTHER INFORMATION CONTACT: Persons interested in obtaining more information should contact Carol Booker at (202) 203–4545.

Dated: July 5, 2006.

Carol Booker,

Legal Counsel.

[FR Doc. 06–6132 Filed 7–6–06; 2:12 pm]

BILLING CODE 8230–01–M

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

[Docket No. 05–BIS–14]

In the Matter of: Ihsan Medhat Elashi, a/k/a I. Ash; a/k/a Haydee Herrera; a/k/a Abdullah Al Nasser; a/k/a/ Samer Suwwan; a/k/a Sammy Elashi, Respondent; Decision and Order

In a charging letter filed on July 29, 2005, the Bureau of Industry and Security (''BIS'') alleged that respondent Ihsan Medhat Elashi (''Ihsan'') committed 32 violations of the Export Administration Regulations (Regulations) [1], issued under the Export Administration Act of 1979, as amended (50 U.S.C. app. §§ 2401–2420) (the Act).[2]

The charges against Ihsan are as follows:

Charge 1 alleges that beginning in or about May 1998 and continuing through in or about February 2002, Ihsan conspired and acted in concert with others, known and unknown, to do or bring about acts that violate the Regulations. The purpose of the conspiracy was to export computer equipment and software, items subject to the Regulations and classified under Export Control Classification Numbers (''ECCN'') 4A994 and 5D002 respectively, from the United States to Syria without the U.S. Department of Commerce licenses required by Section 742.9 of the Regulations, and to export computers and computer accessories to various destinations in violation of orders temporarily denying his export privileges.

Charge 2 alleges that on or about August 2, 2000, Ihsan engaged in conduct prohibited by the Regulations by exporting or causing to be exported a computer, an item classified under ECCN 4A994, to Syria without the Department of Commerce license required by Section 742.9 of the Regulations.

Charge 3 alleges that with respect to the export described above, Ihsan sold a computer with the knowledge that a violation of the Regulations was about to occur or was intended to occur in connection with the computer. At all relevant times, Ihsan knew or had reason to know that the computer in question required a Department of Commerce license for export to Syria, and that the required license had not been obtained.

Charges 4–15 allege that on 12 occasions from on or about September 17, 2001 through on or about February 5, 2002, Ihsan took action prohibited by a denial order by exporting computers, clothes, printers, strobes, network equipment, SCSI kit, and computer accessories, items subject to the Regulations, to Syria, Saudi Arabia, Jordan, and Egypt. Ihsan was denied his export privileges on September 6, 2001. See 66 FR. 47,630 (September 13, 2001). The temporary denial order prohibited Ihsan from ''participat[ing] in any way in any transaction involving any commodity, software or technology (hereafter collectively referred to as ''item'') exported or to be exported from the United States that is subject to the [Regulations].''

Charge 16 alleges that on or about October 12, 2001, Ihsan took action prohibited by a denial order by carrying on negotiations concerning a transaction involving computers, items subject to the Regulations, to Saudi Arabia. Ihsan was denied export privileges on September 6, 2001. See 66 FR 47,630 (September 13, 2001). The temporary denial order prohibited Ihsan from ''carrying on negotiations concerning * * * any transaction involving any item to be exported from the United States that is subject to the [Regulations].''

Charges 17–29 allege that with respect to the 13 occasions listed in charges 4–16, Ihsan sold computers and computer accessories with knowledge that a violation of the Regulations was about to occur or was intended to occur in connection with the computers, clothes, printers, strobes, network equipment, SCSI kit, or computer accessories. At all relevant times, Ihsan knew or had reason to know that he was denied his export privileges, that authorization from the Department of Commerce was required for any export subject to the Regulations, and that such authorization had not been obtained.

Charges 30–32 allege that on three of the occasions described in charges 4–15 above Ihsan took actions with the intent of evading the order temporarily denying his export privileges. Specifically, Ihsan continued to export or cause the export of computer accessories and a SCSI kit under the names Mynet.net, Kayali Corporation, and Samer Suwwan to disguise the fact that he was the exporter of the items.

In a letter dated August 10, 2005, Ihsan answered the charging letter by denying any wrongdoing. Pursuant to a modified Scheduling Order issued by the Administrative Law Judge (ALJ), on March 16, 2006, BIS filed its Memorandum and Submission of Evidence to Supplement the Record. On March 27, 2006, Respondent filed his defense to the record. On April 28, 2006, BIS filed the Bureau of Industry and Security's Rebuttal to Respondent's Filing and Memorandum and Submission of Evidence to Supplement the Record.

Based on the record, on June 5, 2006, the ALJ issued a Recommended Decision and Order in which he found that Ihsan committed 30 violations of the Regulations. Specifically, the ALJ found that Ihsan committed charges 1–11, 13–24, and 26–32. The ALJ found that BIS did not prove by a preponderance of the evidence charges 11 and 25. The ALJ recommended that Ihsan be assessed a $330,000 civil penalty and a denial of Ihsan's export privileges for fifty (50) years.

The ALJ's Recommended Decision and Order, together with the entire record in this case, has been referred to me for final action under Section 766.22 of the Regulations. I find that the record

[1] 15 CFR parts 730–774 (2006). The charged violations occurred from 1998 to 2002. The Regulations governing the violations at issue are found in the 1998 through 2002 versions of the Code of Federal Regulations (15 CFR Parts 730–774 (1998–2002)). The 2006 Regulations establish the procedures that apply to this matter.

[2] From August 21,1994 through November 12, 2000, the Act was in lapse. During that period, the President, through Executive Order 12924, which had been extended by successive Presidential Notices, the last of which was August 3, 2000 (3 CFR, 2000 Comp. 397 (2001)), continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C. §§ 1701–1706) (''IEEPA''). On November 13, 2000, the Act was reauthorized by Pub. L. 106–508 (114 Stat. 2360 (2000)) and it remained in effect through August 20, 2001. Executive Order 13222 of August 17, 2001 (3 CFR, 2001 Comp. 783 (2002)), which has been extended by successive Presidential Notices, the most recent being that of August 6, 2004 (69 48763, August 10, 2004), continues the Regulations in effect under IEEPA.

supports the ALJ's findings of fact and conclusions of law regarding the liability of Ihsan for charges 1–11, 13–24, and 26–32. I also find that the penalty recommended by the ALJ is appropriate, given the nature of the violations, the importance of preventing future unauthorized exports, the lack of mitigating circumstances, and Ihsan's total disregard for the denial order imposed upon him.

Based on my review of the entire record, I affirm the findings of fact and conclusions of law in the ALJ's Recommended Decision and Order.

Accordingly, it is therefore ordered,

First, that a civil penalty of $330,000 is assessed against Ihsan, which shall be paid to the U.S. Department of Commerce within 30 days from the date of entry of this Order.

Second, that, pursuant to the Debt Collection Act of 1982, as amended (31 U.S.C. §§ 3701–3720E), the civil penalty owed under this Order accrues interest as provided and, if payment is not made by the due date specified, Ihsan will be assessed, in addition to the full amount of the civil penalty and interest, a penalty charge and an administrative charge.

Third, that, for a period of fifty years from the date of this Order, Ihsan Medhat Elashi (a/k/a I. Ash, Haydee Herrera, Abdullah Al Nasser, Samer Suwwan, and Sammy Elashi), of Seagoville FCI, 2113 North Highway, Seagoville, Texas, 75159, and, when acting for or on behalf of Ihsan, his representatives, agents, assigns, and employees (''Denied Person''), may not, directly or indirectly, participate in any way in any transaction involving any commodity, software or technology (hereinafter collectively referred to as ''item'') exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations, including, but not limited to:

A. Applying for, obtaining, or using any license, License Exception, or export control document;

B. Carrying on negotiations concerning, or ordering, buying, receiving, using, selling, delivering, storing, disposing of, forwarding, transporting, financing, or otherwise servicing in any way, any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations; or

C. Benefitting in any way from any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations.

Fourth, that no person may, directly or indirectly, do any of the following:

A. Export or reexport to or on behalf of the Denied Person any item subject to the Regulations;

B. Take any action that facilitates the acquisition or attempted acquisition by the Denied Person of the ownership, possession, or control of any item subject to the Regulations that has been or will be exported from the United States, including financing or other support activities related to a transaction whereby the Denied Person acquires or attempts to acquire such ownership, possession or control;

C. Take any action to acquire from or to facilitate the acquisition or attempted acquisition from the Denied Person of any item subject to the Regulations that has been exported from the United States;

D. Obtain from the Denied Person in the United States any item subject to the Regulations with knowledge or reason to know that the item will be, or is intended to be, exported from the United States; or

E. Engage in any transaction to service any item subject to the Regulations that has been or will be exported from the United States and that is owned, possessed or controlled by the Denied Person, or service any item, of whatever origin, that is owned, possessed or controlled by the Denied Person if such service involves the use of any item subject to the Regulations that has been or will be exported from the United States. For purposes of this paragraph, servicing means installation, maintenance, repair, modification or testing.

Fifth, that, after notice and opportunity for comment as provided in Section 766.23 of the Regulations, any person, firm, corporation, or business organization related to the Denied Person by affiliation, ownership, control, or position of responsibility in the conduct of trade or related services may also be made subject to the provisions of this Order.

Sixth, that this Order does not prohibit any export, reexport, or other transaction subject to the Regulations where the only items involved that are subject to the Regulations are the foreign-produced direct product of U.S.-origin technology.

Seventh, that this Order shall be served on the Denied Person and on BIS, and shall be published in the **Federal Register**. In addition, the ALJ's Recommended Decision and Order, except for the section related to the Recommended Order, shall be published in the **Federal Register**.

This Order, which constitutes the final agency action in this matter, is effective immediately.

Dated: June 29, 2006.

David H. McCormick,

Under Secretary for Industry and Security.

Instructions for Payment of Civil Penalty

1. The civil penalty check should be made payable to: U.S. Department of Commerce.

2. The check should be mailed to: U.S. Department of Commerce, Bureau of Industry and Security, Export Enforcement Team, Room H–6883, 14th Street and Constitution Avenue, NW., Washington, DC. Attn: Sharon Gardner.

Recommended Decision and Order

Before:

Hon. Peter A. Fitzpatrick, Administrative Law Judge, United States Coast Guard.

Appearances:

Peter R. Klason, ESQ, Craig S. Burkhardt, ESQ, & Melissa B. Mannino, ESQ.
For the Bureau of Industry and Security.

Ihsan Medhat Elashi
For Respondent.

II. Summary of Decision

This case involves operations by Respondent, Ihsan Medhat Elashi,[1] in his personal capacity, in his capacity as systems consultant for Infocom Corporation, and in his capacity as president of Tetrabal Corporation of Seagoville, Texas, to unlawfully export goods in violation of the Export Administration Act of 1979 (''EAA'' or ''Act'')[2] and the Export Administration Regulations (''EAR'' or ''Regulations'').[3] The EAA and the underlying EAR establish a ''system of controlling exports by balancing national security, foreign policy and

[1] Two different spellings have been used for ''Elashi.'' Some documents, such as the Respondent's criminal indictment (Gov't Ex. 1), use the spelling ''Elashyi.'' While other documents, such as the Respondent's Temporary Denial Order (Gov't Ex. 7), use the spelling ''Elashi.'' To stay consistent, this Recommended Decision and Order will use the spelling ''Elashi'' throughout.

[2] 50 U.S.C. app. §§ 2401–2420 (2000). The EAA and all regulations under it expired on August 20, 2001. *See* 50 U.S.C. app. §§ 2419. Three days before its expiration, the President declared that the lapse of the EAA constitutes a national emergency. *See* Exec. Order. No. 13222, reprinted in 3 CFR at 783–784, 2001 Comp. (2002). The President maintained the effectiveness of the EAA and its underlying regulations through successive Presidential Notices, the most recent being that of August 2, 2005 (70 FR 45,273 (Aug. 2, 2005)). Courts have held that the continuation of the operation and effectiveness of the EAA and its regulations through the issuance of Executive Orders by the President constitutes a valid exercise of authority. *See Wisconsin Project on Nuclear Arms Control* v. *United States Dep't of Commerce*, 317 F.3d 275, 278–79 (D.C. Cir. 2003); *Times Publ'g Co.*, 236 F.3d at 1290.

[3] The EAR is currently codified in the Code of Federal Regulations at 15 CFR parts 730–774 (2006). The charged violations occurred from 1998 to 2002. The EAR governing the violations at issue are found in the 1998 to 2002 versions of the Code of Federal Regulations (15 CFR parts 730–774 (1998–2002)).

domestic supply needs with the interest of encouraging export to enhance * * * the economic well being'' of the United States. *See Times Publ'g Co.* v. *United States Dep't of Commerce*, 236 F.3d 1286, 1290 (11th Cir. 2001); *see also* 50 U.S.C. App. §§ 2401–02.

Here, thirty-two violations of the EAR are alleged and the Bureau of Industry and Security, United States Department of Commerce (''BIS'' or ''Agency'') seeks denial of the Respondent's export privileges from the United States for a period of 50 years and a civil penalty in the amount of $352,000. This case was brought while Respondent was serving a 72-month sentence in Federal prison based, in part, on a finding of guilt to one count of conspiracy to violate the EAR. *See United States* v. *Ihsan Elashyi*, 3:02–CR–052–L(05) (N.D. TX).

Charge 1–3 in this administrative proceeding are identical to or are in connection with the conspiracy charge before the District Court to which Respondent was found Guilty and for which the court entered a judgment and sentence. These charges are found proved.

Charges 4–16 in this administrative proceeding allege that Respondent acted on 13 occasions in violation of an export denial order. With respect to those 13 occasions, in Charges 17–29, BIS also alleges Respondent knowingly violated the EAR. Charges 4–29 are found proved, with the exception of Charges 12 and 25 which are found not proved. Charge 12 is found to be part of the same transaction as Charge 11 and Charge 25 is found to be part of the same transaction as Charge 24.

Charges 30–32 in this administrative proceeding allege Respondent with taking action to evade a denial order. These charges correspond to the facts set forth in Charges 9, 10, and 15. These charges are found proved.

No hearing was requested and there was consent to the making of the decision on the record. BIS submitted substantial and probative evidence in support of the charges. Respondent did not address the validity of the evidence and instead relied upon affirmative defenses. These defensives were found to be without merit. In lieu of the numerous violations, a Denial Order of 50 years and civil penalty of $330,000 is recommended.

III. Preliminary Statement

On July 29, 2005, BIS [4] filed a Charging Letter against Respondent Ihsan Medhat Elashi (''Elashi'' or ''Respondent'') (Docket No. 05–BIS–14) alleging thirty-two violations of the EAR. The charges alleged the following:

Charge 1 alleged that on or about May 1998, to on or about February 2002, Respondent violated Section 764.2(d) of the EAR by conspiring to (1) export computer equipment and software to Syria without the required U.S. Department of Commerce license and (2) to export computer and computer accessories to various destinations in violation of an order temporarily denying his export privileges.

Charge 2 alleged that on or about August 2, 2000, Respondent violated Section 764.2(a) of the EAR by exporting or causing to be exported a computer to Syria without the required U.S. Department of Commerce license.

Charge 3 alleged that in respect to the export made in Charge 2, Respondent violated Section 764.2(e) of the EAR by selling a computer with the knowledge that a violation of the EAR would occur.

Charges 4–15 alleged that on twelve occasions on or about September 17, 2001, to on or about February 5, 2002, Respondent violated Section 764.2(k) of the EAR by taking action prohibited by a denial order by exporting items subject to the EAR, to include computers, clothes, printers, strobes, network equipment, SCSI kit, and computer accessories. The schedule of the alleged violations, setting out the dates, destinations, commodity exported, Export Control Classification Number (ECCN), and invoice values was attached to the Charging Letter.

Charge 16 alleged that on or about October 12, 2001, Respondent violated Section 764.2(k) of the EAR by taking action prohibited by a denial order by carrying on negotiations concerning a transaction subject to the EAR, to include the export of computers.

Charges 17–29 alleged that in respect to thirteen occasions described in Charges 4–16, Respondent also violated Section 764.2(e) of the EAR by selling computers and computer accessories with knowledge that a violation of the EAR was about to occur or was intended to occur.

Charges 30–32 alleged that in respect to Charges 9, 10, and 15, Respondent violated Section 764.2(h) of the EAR by taking actions with the intent of evading the order temporarily denying his export privileges.

On August 5, 2005, this case was placed on the docket by the U.S. Coast Guard Administrative Law Judge Docketing Center pursuant to the Interagency Agreement between BIS and the U.S. Coast Guard.

On August 10, 2005, Respondent submitted a ''response'' to the Charges. This response was written by Respondent without aid of counsel. Respondent did not refer to this response as an ''Answer,'' however, since the response addresses the Charges, it will be considered Respondent's Answer. In the Answer, Respondent claims he is not subject to the EAR because he only exported ''publicly available'' technology and software. Respondent also believes the criminal penalties he has received, which resulted from the same facts set forth in the Charges, should serve as sufficient ''justice'' and any further action would constitute double jeopardy. Respondent notes that he is appealing these criminal convictions since the jury verdict was based on ''confusions.'' Respondent claims to have inadequate financial resources to hire a lawyer and requested a court appointed lawyer.

On September 15, 2005, the undersigned was assigned to preside over this case by order of the Coast Guard Chief Administrative Law Judge.

On September 30, 2005, a ''Briefing Schedule Order'' was issued setting forth a proceeding without a hearing. Neither BIS nor Respondent made a written demand for a hearing, as such, there was consent to the making of the decision on the record. *See* 15 CFR § 766.6(c) and 766.15. This Order also denied Respondent's request for a court appointed lawyer in view of the fact that this proceeding is not a criminal matter, but is a civil matter involving the imposition of administrative sanctions.

On October 6, 2005, BIS submitted a Request for Amendment to Scheduling Order. BIS requested a delay in order to allow the sentencing in Respondent's related criminal case to occur before BIS was required to submit their supplement to the record. On October 13, 2005, this Request was granted.

On January 20, 2006, BIS submitted a second Request for Amendment to Scheduling Order. BIS requested this amendment as Respondent's sentencing date in the related criminal conviction had been delayed. On January 23, 2006, this Request was granted. It was ordered that no later than March 17, 2006, BIS shall file all evidence in support of the charges; no later than April 17, 2006, the Respondent shall file all evidence in defense of the charges; and no later than May 1, 2006, BIS shall file its rebuttal to the Respondent's evidence.

On March 16, 2006, BIS submitted its Memorandum and Submission of Evidence to Supplement the Record. On March 27, 2006, Respondent filed his defense to the evidence. On April 28, 2006, BIS filed the Bureau of Industry and Security's Rebuttal to Respondent's Filing and Memorandum and Submission of Evidence to Supplement the Record.

IV. Applicable Statutes and Regulations

The export violations in this administrative proceeding were alleged to have occurred between 1998 and 2002. Thus, the export control laws and regulations in effect between 1998 and 2002 govern resolution of this matter. Those laws and regulations are substantially similar to the current export control laws and regulations. *See* Attachment A for applicable statutes and regulations.

V. Recommended Findings of Fact & Recommended Ultimate Findings of Fact and Conclusions of Law

[Redacted Section]

VI. Discussion

BIS has sought to prove Respondent committed numerous violations of the EAR through the submission of extensive documentary evidence. Respondent has not challenged the validity of this evidence; instead, Respondent's defense rests upon several broad themes. First, Respondent claims that the items he exported were

[4] Through an internal organizational order, the Department of Commerce changed the Bureau of Export Administration (BXA) to Bureau of Industry and Security (BIS). *See* Industry and Security Programs: Change of Name, 67 FR 20630 (Apr. 26, 2002). Pursuant to the Savings Provision of the order, ''Any actions undertaken in the name of or on behalf of the Bureau of Export Administration, whether taken before, on, or after the effective date of this rule, shall be deemed to have been taken in the name of or on behalf of the Bureau of Industry and Security.'' *Id.* at 20631. BXA issued the Temporary Denial Order which will be referenced later in this decision.

''publicly available'' and therefore not ''subject to the EAR.'' Second, Respondent believes the order temporarily denying his export privileges had no ''force of law'' as applied to him. Third, Respondent makes a plea asking for leniency, as he believes any further penalties in light of the related criminal convictions would not constitute ''true justice'' and would equate to double jeopardy. These arguments by Respondent have been rejected and the evidence submitted by BIS has been found to adequately support most of the charges.

A. Exports Not Subject to the Regulations

Respondent's first defense states that no violation of the EAR occurred because he ''was not subject to [the] E.A.R. as long as the technology to be exported [was] publicly available.'' (Defense,[5] at 1). If the items exported were not subject to the EAR, then no violations of the EAR could have occurred. BIS objects to the use of this defense as untimely since Respondent did not raise this affirmative defense in the Answer. (Rebuttal,[6] at 3–4). I find the timeliness objection to be unpersuasive. This defense was addressed in Respondent's Answer. Respondent states, ''I would like to point out the fact that the Export Administration [R]egulations clearly states that if the [t]echnology or software I am exporting or re-exporting are publicly available, then I am not subject to the 'E.A.R.' All my export[s] were publicly available and none required a license.'' (Answer,[7] at 2). Accordingly, BIS's argument that Respondent's defense is untimely is rejected.

While Respondent raised this defense in a timely manner, it is nevertheless unpersuasive. Publicly available technology and software are generally not subject to the EAR. *See* 15 CFR 734.3(b)(3). However, BIS did not charge Respondent with exporting technology or software,[8] instead Respondent was charged with exporting commodities—''[a]ny article, material, or supply except technology or software.'' 15 CFR 772.1. A commodity is a physical item, while technology is ''information'' and software is ''programs.'' *Id.* Unlike technology and software, commodities have no public availability exception. Since Respondent is charged with exporting commodities, Respondent's exports are not excluded from the EAR under the public availability exception.

B. Validity of the Temporary Denial Order

Respondent asserts that the Temporary Denial Order[9] (IDO) issued against Respondent ''had no force of law on Ihsan Elashyi and Tetrabal.'' (Defense, at 2). If the TDO was not in effect, Respondent would not be in violation of Charges 4–32, since each charge contains the common factual element of acting in violation of a TDO. BIS objects to the use of this defense as untimely since Respondent did not raise this affirmative defense in the Answer. (Rebuttal, at 3–4). I find the timeliness objection to be unjustified. Respondent is a pro se petitioner and his defenses will be less sophisticated than an experienced attorney. As such, if a pleading might possibly have merit, ''the long-standing practice is to construe pro se pleadings liberally.'' *Hill* v. *Braxton*, 277 F.3d 701, 707 (4th Cir. 2002); *see Haines* v. *Kerner*, 404 U.S. 512,520 (1972). Respondent asserts[10] that his Answer addresses the issue of an invalid TDO. In the Answer, Respondent writes he is appealing the criminal convictions because his conviction was based on ''confusions.'' (Answer, at 2). Respondent clarifies these ''confusions'' as being the false testimony Respondent believes was given in his trial to justify the TDO. (See Defense, at 2). Respondent believes these ''confusions'' will invalidate the TDO. *Id.* Taking into consideration that this is a pro se pleadings, I find that Respondent addressed the affirmative defense of an invalid TDO in a timely manner.

While Respondent raised this defense in a timely manner, it is nevertheless unpersuasive. Respondent claims the TDO ''had no force of law on Ihsan Elashyi or Tebrabal.'' *Id.* However, Respondent previously pled guilty to one count of exporting an item in violation of this TDO. *See United States of America* v. *Ihsan Elashyi*, Case No. 3:02–CR–033–L(01) (N.D. TX). Such a pleading forecloses his ability, via the doctrine of collateral estoppel, to challenge the validity of the TDO in this administrative proceeding.

The doctrine of collateral estoppel precludes a party from disputing the facts in an administrative proceeding that were adversely decided against that party in a preceding criminal proceeding.[11] *Amos* v. *Commissioner*, 360 F.2d 358 (4th Cir. 1965); *cf. Emich Motors Corp.* v. *General Motors Corp.*, 340 U.S. 558, 568 (1951) (criminal conviction has been given collateral estoppel effect in a subsequent civil proceeding); *United States* v. *Podell*, 572 F.2d 31, 35 (2d Cir. 1978); see also *United States* v. *Utah Construction & Mining Co.*, 384 U.S. 394 (1966) (collateral estoppel applies in administrative proceedings). To prevail, a party seeking to invoke the doctrine of collateral estoppel must establish: (1) The issue sought to be precluded is the same as that involved in the previous action; (2) the issue was actually litigated; (3) the issue was determined by a final, binding judgment; and (4) the determination of the issue was essential to the judgment. *Grella* v. *Salem Five Central Sav. Bank*, 42 F.3d 26, 30 (1st Cir. 1994); *Central Hudson Gas & Elec. Corp.* v. *Empresa Naviera Santa*, 56 F.3d 359, 368 (2d Cir. 1995).

The four elements of collateral estoppel are satisfied in this proceeding. On April 10, 2000, Respondent was indicted on thirteen charges of exporting items from the United States in violation of an order temporarily denying his export privileges. Respondent plead guilty to Charge 3 of this indictment on October 23, 2002 in *United States of America* v. *Ihsan Elashyi*, supra. The export for which Respondent plead guilty is the same export that BIS has referenced in this proceeding as Charges 6 and 19. The order temporarily denying Respondent's export privileges described in the indictment is the same TDO that BIS has charged Respondent with violating in Charges 4–32. (Gov't Ex. 7). As such, the issue sought to be precluded, the validity of a specific TDO, is the same in both the criminal proceeding and this proceeding. Respondent's guilty plea satisfies the requirement that the issue was actually litigated.[12] The issue was also determined by a final and binding judgment. When the TDO was issued, the EAA provided a means by which Respondent could have appealed the issuance. *See* 50 U.S.C. app. § 2412(d)(2). Respondent did not appeal[13] the Under Secretary of Commerce for Export Administration's Decision and Order granting the TDO, nor has he appealed his guilty plea in *United States of America* v. *Ihsan Elashyi*, supra. Finally, the validity of the TDO was essential to the judgment in the criminal case. Respondent plead guilty to Charge 3 of the criminal indictment. This indictment set forth that he willfully violated

[5] ''Defense''—indicates Respondent's March 27, 2006 letter responding to BIS's submission of evidence.

[6] ''Rebuttal''—indicates BIS's April 28, 2006 filing titled the Bureau of Industry and Security's Rebuttal to Respondent's Filling and Memorandum and Submission of Evidence to Supplement the Record.

[7] ''Answer''—indicates Respondent's August 10, 2005 letter responding to Charges BIS filed against Respondent.

[8] Charge 1 charged Respondent, in part, with conspiracy to export software, but this charge was connected to the export of an entire computer system to Syria (the software was loaded onto the computer). The computer system had no publicly availability exception and Respondent was criminally convicted of conspiracy and found to have acted in violation of the EAR in connection with this export. *United States of America* v. *Ihsan Elashyi*, Case No. 3:02–CR–052–L(05) (N.D. TX).

[9] On September 6, 2001, the Assistant Secretary of Commerce for Export Enforcement issued an order that denied the export privileges of Respondent for a period of 180 days. *See* 66 Fed. Reg. 47630 (September 13, 2001).

[10] ''My letter [Answer] on August 10, 2005 did not in no way say that Ihsan Elahyi generally denied all of the charges, but rather it said that Ihsan EIashyi received a sever punishment for exporting while under a 'TDO' that had no force of law on him.'' (Defense, at 2).

[11] This discussion of collateral estoppel is the same legal conclusion as set forth in *In re. Abdullamir Mahid*, Order Granting in Part and Denying in Part Bureau of Industry and Security's Motion for Summary Decision, Docket No. 02–BXA–01, at 11.

[12] Application of collateral estoppel from a criminal proceeding to a subsequent civil proceeding is not in doubt. It is well settled that a guilty plea has preclusive effect in a subsequent administrative proceeding as to those matters determined in the criminal case. *New York* v. *Julius Nasso Concrete Corp.*, 202 F.3d 82, 86 (2d Cir. 2000); *United States* v. *Killough*, 848 F.2d 1523, 1528 (11th Cir. 1998); *United States* v. *Podell*, 572 F.2d 31, 35 (2d Cir. 1978).

[13] Respondent appealed the TDO to the U.S. Coast Guard Administrative Law Judge Docketing Center. On November 2, 2001, the Chief Administrative Law Judge issued a recommended decision that denied the appeal. On November 10, 2001, the Under Secretary of Commerce for Export Administration affirmed the recommended decision and order of the Chief Administrative Law Judge. There is no evidence that Respondent appealed the decision of the Under Secretary. As such, Respondent failed to exhaust his statutory remedies of appeal as set forth in 50 U.S.C. app. § 2412(d).

the EAR by exporting goods to Saudi Arabia in violation of a TDO. If the TDO had not been valid, Respondent would not have been in violation of the EAR. The four elements of collateral estoppel are satisfied in this proceeding. Accordingly, the doctrine of collateral estoppel precludes Respondent from challenging the validity of the TDO in this proceeding.

C. Double Jeopardy

Respondent moves to dismiss the charges in this proceeding as a violation of the Double Jeopardy Clause of the Fifth Amendment. Respondent argues the charges brought forth in this proceeding are based on essentially the same facts of which Respondent has already been found criminally guilty.[14] Respondent's argument is unpersuasive as the current proceeding is civil in nature and not criminal.

The Double Jeopardy ''Clause protects only against the imposition of multiple criminal punishments for the same offense.'' *Hudson* v. *United States*, 522 U.S. 93, 93 (1997). Courts have traditionally looked at Congressional intent when determining if a penalty is civil or criminal in nature. *Id.* at 94. A penalty statute labeled ''civil'' will generally be considered civil in nature unless the sanction is so punitive as to render it criminal. *Id.* ''[N]either money penalties nor debarment has historically been viewed as'' criminal in nature. *Id.* at 104.

Congress authorized a range of penalties available for export violations. *See* 50 U.S.C. app. 2410(c); 15 CFR 764.3. These penalties include a monetary penalty of up to $11,000 [15] per violation and a revocation of export privileges. *Id.* Congress labeled these money penalties and debarment action as ''[c]ivil penalties.'' 50 U.S.C. app. 2410(c). From the wording of the statute, it is evident that Congress clearly intended the penalties available in this proceeding to be civil in nature. Since this proceeding is civil in nature, the Double Jeopardy Clause will not be a bar to the issuance of any additional administrative sanctions.

D. Violations of the Export Administration Act and Regulations

While Respondent has not refuted the evidence submitted against him by BIS, the burden of proof remains on BIS to prove the allegations in the charging letter by reliable, probative, and substantial evidence. *See* 5 U.S.C. 556(d). The Supreme Court has held that 5 U.S.C. 556(d) adopts the traditional ''preponderance of the evidence'' standard of proof. *Dir., Office of Workers' Comp. Programs* v. *Greenwich Collieries*, 512 U.S. 267, 290 (1994) (the preponderance of the evidence, not the clear-and-convincing standard, applies in adjudications under the APA) (citing *Steadman* v. *S.E.C.*, 450 U.S. 91 (1981)). To prevail, BIS must establish that it is more likely than not that the Respondents committed the violations alleged in the charging letter. *See Herman & Maclean* v. *Huddleston*, 459 U.S. 375, 390 (1983). In other words, the Agency must demonstrate ''that the existence of a fact is more probable than its nonexistence.'' *Concrete Pipe & Products* v. *Construction Laborers Pension Trust*, 508 U.S. 602, 622 (1993). To satisfy the burden of proof, BIS may rely on direct and/or circumstantial evidence. *See generally Monsanto Co.* v. *Spray-Rite Servo Corp.*, 465 U.S. 752, 764–765 (1984).

The Agency has produced sufficient evidence to establish that Respondent violated all charges, except Charges 12 and 25.

1. Charge 1: Conspiracy To Export Without Required License

Charge 1 alleges that Respondent conspired to export computers and software to Syria in violation of 15 CFR 742.9. The conspiracy regulations provides: ''No person may conspire or act in concert with one or more persons in any manner or for any purpose to bring about or to do any act that constitutes a violation of the EAA, the EAR, or any other order, license or authorization issued thereunder.'' 15 CFR 764.2(d). This charge is found proved.

On January 27, 2006, Respondent was found guilty of conspiracy to knowingly violate the EAR and was sentenced to 60 months imprisonment for the conspiracy and for other counts for which Respondent was convicted.[16] (Gov't Ex. 3, at 3). The central facts of this charge are identical to those set forth in the criminal conspiracy. (Gov't Ex. 1, at 8–12). Respondent received orders for computers from customers in Syria, contracted to ship computers to Syria, failed to file required Shipper's Export Declaration for exports to Syria, and failed to receive the necessary export licenses. (Gov't Ex. 1, at 10–11). The criminal conspiracy indictment and subsequent conviction provide sufficient evidence that Respondent conspired to export computers and software to Syria.

2. Charge 2: Export of Computer Without Required License

Charge 2 alleges that Respondent violated 15 CFR 764.2(a) by exporting a computer to Syria without the required license on August 2, 2002. The relevant regulation prohibits any person from engaging in ''any conduct prohibited by or contrary to * * * the EAA [or] the EAR * * *.'' 15 CFR 764.2(a). This charge is found proved.

In connection with the conspiracy referenced above, Respondent engaged in conduct prohibited by the EAR by exporting a computer to Syria without the proper export license. See 15 CFR 742.9. The central facts of this charge are identical to the facts alleged in Count 11 of the criminal indictment against Respondent. (Gov't Ex. 1, at 16). The indictment alleged that on July 31, 2000, Respondent knowingly and willfully exported an item to Syria without the license required by 15 CFR 742.9. *Id.* Respondent was found guilty of exporting this computer to Syria without the proper license and was sentenced to 72 months imprisonment for this export and for other counts for which he was convicted. (Gov't Ex. 2, at 10; Gov't Ex. 3, at 3). The facts alleged in the indictment and subsequent conviction provide sufficient evidence that Respondent exported the item to Syria in violation of the EAR.

3. Charge 3: Selling Computer With Knowledge of Violation

Charge 3 alleges that Respondent violated 15 CFR 764.2(e) by selling a computer to Syria with knowledge that a violation was about to occur. The relevant regulation provides that ''no person may * * * sell * * * any item exported or to be exported from the United States, or that is otherwise subject to the EAR, with knowledge that a violation of the EAA, the EAR, or any order * * * is about to occur, or is intended to occur in connection with the item.'' 15 CFR 764.2(e). This charge is found proved.

Respondent engaged in conduct prohibited by the EAR by selling a computer to Syria with knowledge a violation of the EAR would occur. As described in Charge 1, Respondent was found guilty of conspiring to export items without the proper license. As described in Charge 2, Respondent was found guilty of knowingly exporting a computer to Syria without the required license. In connection with these charges, BIS has provided an invoice showing the sale of this exported computer from Infocom Corporation, to A1, Ghein Bookshop in Damascus, Syria. (Gov't Ex. 6). Respondent was a systems consultant and sales representative for Infocom at this time. (Gov't Ex. 1, at 2). The facts alleged in the indictment and subsequent conviction for the export of this computer, combined with the invoices, provide sufficient evidence that Respondent sold a computer with knowledge that a violation would occur.

4. Charge 4–15: Exporting While Denied Export Privileges

Charges 4–15 allege that Respondent violated 15 CFR 764.2(k) by exporting, on twelve occasions, in violation of an export denial order. The relevant regulation provides that ''[n]o person may take any action that is prohibited by a denial order.'' 15 CFR 764.2(k). Charges 4–11 and 13–15 are found proved. Charge 12 is found not proved.

On September 6, 2001, the Assistant Secretary of Commerce for Export Enforcement entered an order that denied the export privileges of Respondent for a period of 180 Days. (Gov't Ex. 7). This order stated that Respondent ''may not, directly or indirectly, participate in any way in any transaction involving any commodity, software or technology * * * exported or to be exported from the United States that is subject to the [EAR] * * *.'' (Gov't Ex. 7, at 2). Respondent was served a copy of this order on September 7, 2001.[17] With

[14] *United States of America* v. *Ihsan Elashyi*, Case No. 3:02–CR–052–L(05) (N.D. TX) and *United States of America* v. *Ihsan Elashyi*, Case No. 3:02–CR–033–L(01) (N.D. TX).

[15] The maximum penalty per violation is stated in § 764.3(a)(1), subject to adjustments under the Federal Civil Penalties Adjustment Act of 1990 (28 U.S.C. 2461, note (2000)), which are codified at 15 CFR 6.4.

[16] *United States of America* v. *Ihsan Elashyi*, Case No. 3:02–CR–052–L(05) (N.D. TX).

[17] The certificate of service lists that a ''Request for Stay of Proceeding to Conduct Settlement Negotiations'' was served. (Gov't Ex. 8). However, the order that accompanied this certificate of service was titled ''Order Temporarily Denying Export Privileges.'' It appears the drafter of the

Continued

knowledge of this denial order, the evidence shows Respondent continued to export the following items via Tetrabal Corporation [18] or in his own capacity:

Charge 4: On August 19, 2001, Tetrabal issued an invoice for sale and export of 10 ''horn strobe signal telecom telephone ringer devise,'' items subject to the EAR. (Gov't Ex. 12). The purchaser was listed as Al Bassam International in Alkhobar, Saudi Arabia. *Id.* Tetrabal shipped these items to Saudi Arabia, via Airborne Express, on September 22, 2001. (Gov't Ex. 13).

Charge 5: On September 19, 2001, Tetrabal issued an invoice for the sale and export of one box of used clothing, an item subject to the EAR. (Gov't Ex. 14). The purchaser was listed as Teyseer Alkayal in Amman, Jordan. *Id.* Tetrabal shipped these items to Jordan, via Federal Express, on September 19, 2001. (Gov't Ex. 15).

Charge 6: [19] On August 22, 2001, Tetrabal issued an invoice for the sale and export of 82 Dell Dimension 128 computers, items subject to the EAR. (Gov't Ex. 16). The purchaser was listed as E.T.E. in Riyadh, Saudi Arabia. *Id.* Tetrabal shipped these items to Saudi Arabia, via Lufthansa Cargo AG, on September 19, 2001. (Gov't Ex. 17).

Charge 7: On October 15, 2001, ''Albassam Corporation'' [20] issued an invoice for the sale of networking equipment, items subject to the EAR. (Gov't Ex. 19). The purchaser was listed as Al Bassam International in Alkhobar, Saudi Arabia. *Id.* On October 22, 2001, Tetrabal arranged for pickup and delivery of this equipment, via DHL, to Saudi Arabia. (Gov't Ex. 17). This equipment was subsequently detained, prior to delivery, by the Department of Commerce, and seized and forfeited by the U.S. Customs Service. (Gov't Ex. 21).

Charge 8: On October 26, 2001, ''Albassam Corporation'' issued an invoice for the sale of five printers, items subject to the EAR. (Gov't Ex. 22). The purchaser was listed as Al Bassam International in Alkhobar, Saudi Arabia. *Id.* On October 26, 2001, the printers were exported to Saudi Arabia, via DHL Express. (Gov't Ex. 23). In addition to the facts outlined in footnote 20, several other factors show that ''Albassam Corporation'' is an alias of Respondent and that it was in fact Respondent who exported the items. First, Tetrabal's name and DHL account number were on this air waybill, but were scratched out and replaced by ''Bassam Intl'' and a new account number. *Id.* Second, a purchase order for the five printers was issued from a company called Scansource in Greenville, SC to Tetrabal. (Gov't Ex. 24). Tetrabal would have purchased the computers from this company in order to then sell and export the computers to Al Bassam. Third, a receipt was issued showing Tetrabal as the shipper. *Id.* This equipment was subsequently detained, prior to delivery, by the Department of Commerce, and seized and forfeited by the U.S. Customs Service. (Gov't Ex. 25).

Charge 9: On October 31, 2001, Tetrabal issued an invoice for the sale and export of computer accessories, items subject to the EAR. (Gov't Ex. 26). The purchaser was listed as United Computer System in Cairo, Egypt. *Id.* The company Mynet, found to be the same as Tetrabal,[21] shipped these items to Egypt, via Federal Express, on November 2, 2001. (Gov't Ex. 27).

Charge 10: On October 31, 2001, Tetrabal issued an invoice for sale and export of computer accessories, items subject to the EAR. (Gov't Ex. 29). The purchaser was listed as MAC Club in Riyadh, Saudi Arabia. *Id.* The company Mynet shipped these items to Saudi Arabia, via Federal Express, on November 2, 2001, to the same person, Anwar Galam, as the invoice from Tetrabal was made out to. (Gov't Ex. 30). As set forth in Charge 9, Mynet is found to be an alias of Respondent.

Charge 11: On November 5, 2001, Tetrabal provided a quotation to MAC Club in Riyadh, Saudi Arabia for the sale of Apple Imac security cables. (Gov't Ex. 31). On November 7, 2001, Tetrabal issued an invoice for sale of Apple Imac security cables, items subject to the EAR. (Gov't Ex. 32). The purchaser was listed as MAC Club in Riyadh, Saudi Arabia. *Id.* A. Nasser, an officer of Tetrabal,[22] shipped these items to Saudi Arabia, via Airborne Express, on September 22, 2001. (Gov't Ex. 33).

Charge 12: In support of Charge 12, BIS introduced Exhibit 34. Exhibit 34 is an invoice for the sale of Apple Imac and Apple Powermac security cables to MAC Club in Riyadh, Saudi Arabia. This invoice is the same invoice introduced in support of Charge 11 (Exhibit 32). BIS recognizes this and states in its Submission of Evidence that ''[a]lthough the invoice in Exhibit 34 appears identical to that in Exhibit 32, it appears that two separate transactions took place as the Federal Express airway bill numbers listed in Exhibits 33 and 35 are not the same.'' BIS is correct in that two separate airway bill numbers exist. However, this not does prove the existence of two separate transactions/violations. A more likely explanation would be that two shipments were made involving the same transaction. A quotation from Tetrabal was given for the sale of 400 Apple Imac security cables (NG–AIM and NG–AMT variants) to MAC Club. (Gov't Ex. 31). MAC Club responded to this quotation by requesting the purchase of a sample NG–AIM and a sample AG–AMT. (Gov't Ex. 32). An invoice was drawn up for this sale. *Id.* It appears these samples were sent via the air waybills introduced in Exhibits 33 and 35. Charge 12 is found to be part of the same transaction as Charge 11 and is not found to be a separate offense.

Charge 13: On November 21, 2001, Tetrabal provided quotations for the export of various items to United Computer System, attention Moustafa Maarouf, in Cairo, Egypt. (Gov't Ex. 36). On November 30, 2001, a ''Haydee Herrera'' issued an invoice to Moustafa Maarouf for the sale of several of the items for which Tetrabal had provided quotations. (Gov't Ex. 37). ''Haydee Herrera'' has been found to be an alias of Respondent.[23] The items were exported by ''Haydee Herrera,'' via Federal Express, on November 30, 2001. (Gov't Ex. 38).

Charge 14: On December 10, 2001, Tetrabal provided quotations for the export of computers to United Computer System in Cairo, Egypt, attention Moustafa Maarouf. (Gov't Ex. 39). On November 30, 2001, Tetrabal issued a proforma invoice to United Computer Systems, attention Moustafa Maarouf, for sale of computers and computer accessories to Egypt. (Gov't Ex. 40). On December 21, 2001, ''Haydee Herrera'' issued an invoice for the sale of a computer and computer accessories, items subject to the EAR, to Moustafa Maarouf in Cairo, Egypt. (Gov't Ex. 41). As set forth in Charge 14, ''Haydee Herrera'' is found to be an alias of Respondent. The December 21, 2001 invoice and the December 20, 2001 proforma invoice concern the sale of the same items. The items were exported by ''Haydee Herrera,'' via Federal Express, on December 21, 2001. (Gov't Ex. 42).

Charge 15: On January 28, 2002, Tetrabal issued an invoice for the export of SCSI kits to CompuNet in Saida, Lebanon, attention Osama Qaddoura. (Gov't Ex. 43). Prior to the invoice, Respondent had sent and received several e-mails from Osama Qaddoura regarding the export. (Gov't Ex. 44). The e-mail address used by Osama Qaddoura, listed as ''*compunet@net.sy*,'' indicates the company is Syrian, not Lebanese. *Id.* In

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certificate was in error and the certificate should have also been titled ''Order Temporarily Denying Export Privileges.'' On December 4, 2001, Respondent sent a letter to a U.S. Customs office in Dallas, TX. (Gov't Ex. 9). This letter states that Respondent was aware of the export denial order issued against him on September 6, 2001. It is evident that Respondent had knowledge of the denial order.

[18] Respondent was the CEO of Tetrabal Corporation. *Gov't Ex. 9.* As CEO of Tetrabal, Respondent was ultimately responsible for its actions. *See U.S.* v. *Park*, 421 U.S. 658, 670–71 (1975), *see also U.S.* v. *Dotterweich*, 320 U.S. 277 (1943).

[19] The facts alleged by BIS in Charges 6 and 19 are identical to Count 3 of the indictment to which Respondent plead guilty to in *United States of America* v. *Ihsan Elashyi*, Case No. 3:02–CR–033–L(01) (N.D. TX). (Gov't Ex. 10, 11).

[20] ''Albassam Corporation'' is found to be an alias for Respondent and Tetrabal Corporation. The invoices for Albassam are identical in all ways to the invoices used by Respondent for Tetrabal. (See Gov't Ex. 16, 19, 22). Also, all shipping documents for Albassam are issued in the name of Tetrabal. BIS has submitted sufficient evidence to show that ''Albassam Corporation'' served as an alias for Respondent and Tetrabal Corporation.

[21] On a U.S. Postal Service form, Application for Mail Delivery Through Agent, three names are listed as Tetrabal Corporation officers, Ihsan Elashyi, Abdulla Alnasser, and Maysoon Alkayali. (Gov't Ex. 28). Maysoon Alkayali is found to be the same as ''M. Kayali,'' the person who signed the air waybill for Mynet. Furthermore, the address Mynet listed on the air waybill is the same address Tetrabal listed on the U.S. Postal Service form. (Gov't Ex. 27, 28).

[22] Abdulla Alnasser, believed to be the same person as ''A. Nasser,'' is listed as an officer of Tetrabal on the U.S. Postal Service form, an Application for Mail Delivery Through Agent. (Gov't Ex. 28). The address A. Nasser listed on the air waybill is identical to the address listed for Tetrabal on the U.S. Postal Service form. *Id.*

[23] Two pieces of evidence provided by BIS show that ''Haydee Herrera'' was used as an alias for Respondent. First, the address listed for ''Haydee Herrera'' is the same address used by Tetrabal. (Gov't Ex. 36 & 38). Second, the handwritten invoice issued by ''Haydee Herrera'' is identical to the handwritten invoices issued by Tetrabal. (Gov't Ex. 14, 37).

addition, the country code listed for CompuNet telephone number is ''963,'' which is the country code for Syria, not Lebanon. *Id.* The items were shipped by ''Samer Suwwan'' to Saida, Lebanon, via DHL, on February 5, 2002. (Gov't Ex. 45). ''Samer Suwwan'' is believed to be an alias of Respondent.

5. Charge 16: Negotiating an Export While Denied Export Privileges

Charge 16 alleges that Respondent violated 15 CFR 764.2(k) by negotiating a transaction involving the export of an item while he was denied export privileges. The relevant regulation provides that ''[n]o person may take any action that is prohibited by a denial order.'' 15 CFR 764.2(k). Negotiating the sale of an export is an action prohibited by a denial order.[24] Charge 16 is found proved.

On October 12, 2001, Tetrabal issued a quotation to Al-Masdar[25] in Riyadh, Saudi Arabia, for the sale of Dell Dimension computers to Al-Masdar. (Gov't Ex. 46). On October 30, 2001, Respondent and Tetrabal sent a facsimile to Mr. William Martin, a Special Agent in BIS's Dallas Field Office, to request permission to export the computers to Saudi Arabia. (Gov't Ex. 47). On October 30, 2001, Mr. Martin responded to Respondent and Tetrabal informing them that he could not authorize their export and advised them of the pertinent sections of the EAR regarding these types of transactions. (Gov't Ex. 48). Despite this letter, Respondent continued to negotiate the sale of exports to Al-Masdar. (Gov't Ex. 50). On November 19, 2001, Respondent informed Al-Masdar that his accounts were ''shut down'' because of the export denial order. (Gov't Ex. 49). Al-Masdar, fearing that Respondent would not make good on the sale of exports already paid for, sent a letter and copies of correspondence that Al-Masdar had with Respondent and Tetrabal to the U.S. Embassy in Riyadh, Saudi Arabia. (Gov't Ex. 50). The letters and correspondence show that Respondent and Tetrabal negotiated the sale of computers to Al-Masdar, sold the computers to Al-Masdar, and collected money from Al-Masdar for the sale of the computers, while he was denied his export privileges. *Id.* Respondent failed to ship the computers to Al-Masdar when Respondent and Tetrabal began having difficulties as a result of the temporary denial of export privileges. *Id.* This evidence clearly shows that Respondent was engaged in export negotiations while he was denied export privileges.

6. Charges 17–29: Selling Computers and Computer Accessories With Knowledge of Violation

In Charges 4–16, BIS alleges that Respondent knowingly violated his denial order. A separate regulation, 15 CFR 764.2(e),[26] make it a violation to act with knowledge that a violation of the EAR would occur. A violation of a denial order would constitute a violation of the EAR. Therefore, if an individual has a denied export license, violating the denial order is one violation[27] and the act of knowingly violating the EAR is a separate violation.[28] As a result, in respect to the facts set forth in Charges 4–16, BIS also charged Respondent with the act of knowingly violating the EAR in Charges 17–24.[29] Charges 17–24 and 26–29 are found proved. Charge 25[30] is found not proved.

The facts set forth in Charges 4–16 show that Respondent had knowledge that the actions he took would be in violation of the EAR. First, the facts show that the Respondent was aware of the denial order. A certificate of service shows Respondent received the denial order and Respondent drafted a letter stating he was aware of the denial order. (Gov't Ex. 8, 9). The denial order clearly states the order was issued pursuant to the EAR. (Gov't Ex. 8). Any violation of the denial order would therefore be in violation of the EAR. Second, the evidence in Charges 9, 10, and 15 shows Respondent took action to evade the denial order by exporting under aliases. Respondent continued to export under such aliases as Mynet, Kayali Corporation, and Samer Suwwan. Such evasion to export under his own name strongly indicates that Respondent had knowledge that the actions he was undertaking were in violation of the EAR. Charges 17–24 and 26–29 are therefore found proved.

Charge 25 is found not proved.[31] In support of Charge 25, BIS introduced Exhibit 34. Exhibit 34 is an invoice for the sale of Apple Imac and Apple Powermac security cables to MAC Club in Riyadh, Saudi Arabia. This invoice is the same invoice introduced in support of Charge 24 (Exhibit 32). BIS recognizes this and states in its Submission of Evidence that ''[a]lthough the invoice in Exhibit 34 appears identical to that in Exhibit 32, it appears that two separate transactions took place as the Federal Express airway bill numbers listed in Exhibits 33 and 35 are not the same.'' BIS is correct in that two separate airway bill numbers exist. However, this not does show the existence of two separate transactions. A more likely explanation would be that two shipments were made involving the same transaction. A quotation from Tetrabal was given for the sale of 400 Apple Imac security cables (NG–AIM and NG–AMT variants) to MAC Club. (Gov't Ex. 31). MAC Club responded to this quotation by requesting the purchase of a sample NG–AIM and AG–AMT. (Gov't Ex. 32). An invoice was drawn up for this sale. *Id.* It appears these samples were sent via the air waybills introduced in Exhibits 33 and 35. Charge 25 is found to be part of the same transaction as Charge 24 and is not found to be a separate offense.

7. Charges 30–32: Taking Action To Evade Denial Order

Charges 30–32 allege that Respondent violated 15 CFR 764.2(h) by taking action to evade a denial order. The relevant regulation provides that ''[n]o person may engage in any transaction or take any other action with intent to evade the provisions of the EAA, [or] the EAR * * *.'' 15 CFR § 764.2(h). Charges 30–32 are found proved.

Charges 30–32 corresponded respectively to Charges 9, 10, and 15 as discussed above. On each of these occasions, Respondent took action to evade his denial order. In Charge 9, it was shown that Respondent used the aliases ''Mynet'' and ''M. Kayali'' to export computer accessories to Egypt. In Charge 10, it was shown that Respondent again used the aliases ''Mynet'' and ''M. Kayali'' to export computer accessories to Saudi Arabia. In Charge 15, it was shown that Respondent used the alias ''Samer Suwwan'' to export computers to Lebanon. Respondent used these aliases to disguise his continued export of goods. These facts have shown that Respondent took action to evade his denial orders in Charges 30–32.

VII. Reason for the Sanction

Section 764.3 of the EAR establishes the sanctions that BIS may seek for the violations charged in this proceeding. The sanctions are: (1) A civil penalty of up to $11,000 per violation, (2) suspension of practice before the Department of Commerce, and (3) a denial of export privileges under the Regulations. *See* 15 CFR 764.3. BIS moves the Administrative Law Judge to recommend to the Under Secretary for Industry and Security (''Under Secretary'') that the export privileges of Respondent under the Regulations be denied for a period of fifty (50) years and that Respondent be ordered to pay a civil penalty in the amount of $352,000, the maximum civil penalty ($11,000 for each of the 32 violations) allowable based upon the charges in the charging letter.

A fifty year denial of export privileges and a $330,000[32] civil penalty are deemed appropriate sanctions in this case. Respondent has shown severe disregard and contempt for export control laws, including conspiracies to do acts that violate the Regulations, taking actions with knowledge that the actions violated the Regulations, and

[24] The denial order states that Respondent ''may not, directly or indirectly, participate in any way in any transaction involving any commodity, software or technology * * * exported or to be exported from the United States that is subject to the [EAR].'' See *Id.* (Gov't Ex. 7, at 2). Negotiating the sale of an export would be considered ''participat[ing] in any way'' of an export.

[25] Tetrabal spells Al-Maser with an ''e,'' while Saudi Systems Corporation (the company encompassing Al-Masdar) spells Al-Masdar with an ''a.'' This Order will spell Al-Masdar with an ''a.''

[26] The relevant part of the regulation provides that ''[n]o person may * * * sell * * * any item exported or to be exported from the United States, or that is otherwise subject to the EAR, with knowledge that a violation of the EAA, the EAR, or any order * * * is about to occur, or is intended to occur in connection with the item.''

[27] 15 CFR § 764.2(k).

[28] 15 CFR § 764.2(e).

[29] Therefore, the following Charges have the same facts: Charges 4 & 17, 5 & 18, 6 & 19, 7 & 20, 8 & 21, 9 & 22, 10 & 23, 11 & 24, 12 & 25, 13 & 26, 14 & 27, 15 & 28, and 16 & 29.

[30] **Note:** Since Charge 12 was found to be included in the same transaction as Charge 11, Charge 12 was determined not to be found proved. Likewise, Charge 25 (setting forth the same facts as set forth in Charge 12) is also not found proved, since Charge 25 is found to be included in the same transaction as Charge 24 (which has the same facts set forth in Charge 11).

[31] This finding follows the same rationale laid out in Charge 12.

[32] Since Charges 12 and 25 were found not proved, the requested civil penalty was reduced by $22,000 ($11,000 per violation, as set forth in 15 CFR § 764.3).

exporting items in violation of an order prohibiting Respondent from exporting items subject to the Regulations. Respondent engaged in a conspiracy to export items to Syria without the required Department of Commerce authorization. The United States maintains controls over exports to Syria because Syria is a state sponsor of terrorism. In addition, Respondent has shown contempt for the administrative orders issued by BIS by exporting items in violation of an order denying his export privileges and by changing names on shipping documents to evade the order denying his export privileges.

Such a penalty is consistent with penalties imposed in a recent case under the Regulations involving shipments to comprehensively sanctioned countries. *See In the Matter of Petrom GmbH International Trade*, 70 FR 32,743 (June 6, 2005) (affirming the recommendations of the Administrative Law Judge that a twenty year denial and $143,000 administrative penalty was appropriate where violations involved multiple shipments of EAR99 items to Iran as a part of a conspiracy to ship such items through Germany to Iran).

The recommended penalties are also consistent with settlements reached in significant BIS cases under the Regulations concerning illegal exports of pipe coating materials to Libya. *See In the Matter of Jerry Vernon Ford*, 67 FR 7352 (February 19, 2002) (settlement agreement for a 25 year denial); *In the Matter of Preston John Engebretson*, 67 FR 7354 (February 19, 2002) (settlement agreement for a 25 year denial); and *In the Matter of Thane-Coat, Inc.*, 67 FR 7351 (February 19, 2002) (settlement agreement for a civil penalty of $1,120,000 ($520,000 suspended for two years and a 25 year denial)).

The nature and quantity of violations in this case warrant a more significant penalty. In particular, Respondent's contempt for the temporary denial order by continuing to export after the order was imposed and constantly shifting both his name and Tetrabal's name to evade the order warrants the extraordinary penalty proposed in order to prevent others from showing the same contempt for BIS's administrative orders. In addition, there are no factors that have been put forth by Respondent that warrant any mitigation of the penalty.

VIII. Recommended Order

[Redacted Section]

Within 30 days after receipt of this Recommended Decision and Order, the Under Secretary shall issue a written order, affirming, modifying or vacating the recommended decision and order. *See* 15 CFR § 766.22(c).

Done and dated June 5, 2006 at Norfolk, Virginia.

Peter A. Fitzpatrick,
Administrative Law Judge, U.S. Coast Guard, Norfolk, Virginia.

[FR Doc. 06–6022 Filed 7–7–06; 8:45 am]

BILLING CODE 3510–33–M

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

Information Systems Technical Advisory Committee; Notice of Partially Closed Meeting

The Information Systems Technical Advisory Committee (ISTAC) will meet on July 26 and 27, 2006, 9 a.m., in the Herbert C. Hoover Building, Room 3884, 14th Street between Constitution and Pennsylvania Avenues, NW., Washington, DC. The Committee advises the Office of the Assistant Secretary for Export Administration on technical questions that affect the level of export controls applicable to information systems equipment and technology.

July 26

Public Session

1. Opening Remarks and Introductions.
2. Current Issues of Interest to ISTAC, Including Licensing Trends.
3. Export Enforcement.
4. FPGA Computer Architecture.
5. Fab Perspective on Cluster Tools.
6. Synthetic Instruments.
7. Introduction of New WA Proposals.
8. Practitioner's Guide to APP.

July 27

Closed Session

9. Discussion of matters determined to be exempt from the provisions relating to public meetings found in 5 U.S.C. app. 2 sections 10(a)(1) and 10(a)(3).

A limited number of seats will be available for the public session. Reservations are not accepted. To the extent time permits, members of the public may present oral statement to the Committee. The public may submit written statements at any time before or after the meeting. However, to facilitate distribution of public presentation materials to Committee members, the Committee suggests that public presentation materials or comments be forwarded before the meeting to Ms. Yvette Springer at *Yspringer@bis.doc.gov*.

The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on June 27, 2006, pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. app. 2 section (10)(d)), that the portion of the meeting concerning trade secrets and commercial or financial information deemed privileged or confidential as described in 5 U.S.C. 552b(c)(4) and the portion of the meeting concerning matters the disclosure of which would be likely to frustrate significantly implementation of an agency action as described in 5 U.S.C. 552b(c)(9)(B) shall be exempt from the provisions relating to public meetings found in 5 U.S.C. app. 2 sections 10(a)(1) and 10(a)(3). The remaining portions of the meeting will be open to the public.

For more information, call Yvette Springer at (202) 482–4814.

Dated: July 5, 2006.

Yvette Springer,
Committee Liaison Officer.

[FR Doc. 06–6100 Filed 7–7–06; 8:45 am]

BILLING CODE 3510–JT–M

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

Sensors and Instrumentation Technical Advisory Committee; Notice of Partially Closed Meeting

The Sensors and Instrumentation Technical Advisory Committee (SITAC) will meet on July 25, 2006, 9:30 a.m., in the Herbert C. Hoover Building, Room 3884, 14th Street between Constitution and Pennsylvania Avenues, NW., Washington, DC. The Committee advises the Office of the Assistant Secretary for Export Administration on technical questions that affect the level of export controls applicable to sensors and instrumentation equipment and technology.

Agenda

Public Session

1. Welcome and Introductions.
2. Remarks from the Bureau of Industry and Security Management.
3. Industry Presentations.
4. New Business.

Closed Session

5. Discussion of matters determined to be exempt from the provisions relating to public meetings found in 5 U.S.C. app. 2 sections 10(a)(1) and 10(a)(3).

A limited number of seats will be available during the public session of the meeting. Reservations are not accepted. To the extent that time permits, members of the public may present oral statements to the Committee. The public may submit written statements at any time before or after the meeting. However, to facilitate distribution of public presentation materials to the Committee members, the Committee suggests that the materials be forwarded before the meeting to Ms. Yvette Springer at *Yspringer@bis.doc.gov*.

The Assistant Secretary for Administration, with the concurrence of the General Counsel, formally determined on June 27, 2006, pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. app. 2 section 10(d), that the portion of this meeting dealing with pre-decisional changes to the Commerce Control List and U.S. export control policies shall be exempt from the provisions relating to public meetings found in 5 U.S.C. app. 2 sections 10(a)(1) and 10(a)(3). The remaining portions of the meeting will be open to the public.

For more information contact Yvette Springer on (202) 482–4814.

Dated: July 5, 2006.

Yvette Springer,

Committee Liaison Officer.

[FR Doc. 06–6099 Filed 7–7–06; 8:45 am]

BILLING CODE 3510–JT–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–201–805]

Circular Welded Non-Alloy Steel Pipe and Tube From Mexico: Initiation of New Shipper Antidumping Duty Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Initiation of New Shipper Antidumping Duty Review.

EFFECTIVE DATE: July 10, 2006.

FOR FURTHER INFORMATION CONTACT: Patrick Edwards or John Drury, AD/CVD Operations, Office 7, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–8029 or (202) 482–0195, respectively.

SUPPLEMENTARY INFORMATION:

Background

On May 26, 2006, the Department of Commerce (the Department) received a timely request from Conduit S.A. de C.V. (Conduit), in accordance with 19 CFR 351.214(c), for a new shipper review of the antidumping duty order on circular welded non-alloy steel pipe and tube (pipe and tube) from Mexico. *See Notice of Antidumping Duty Order: Circular Welded Non-Alloy Steel Pipe from Mexico*, 57 FR 49453 (November 2, 1992).

Pursuant to 19 CFR 351.214(b), Conduit certified that it is both the exporter and producer of the subject merchandise, that it did not export subject merchandise to the United States during the period of the investigation (POI) (November 1, 1991, through October 31, 1992), and that since the investigation was initiated, it has never been affiliated with any exporter or producer who exported the subject merchandise to the United States during the POI, including those not individually examined during the investigation. Conduit also submitted documentation establishing the date on which the shipment that is the basis for this new shipper review was first entered for consumption, the volume shipped, and the date of its first sale to an unaffiliated customer in the United States.

Scope

The merchandise under review is circular welded non-alloy steel pipes and tubes, of circular cross-section, not more than 406.4 millimeters (16 inches) in outside diameter, regardless of wall thickness, surface finish (black, galvanized, or painted), or end finish (plain end, beveled end, threaded, or threaded and coupled). These pipes and tubes are generally known as standard pipes and tubes and are intended for the low pressure conveyance of water, steam, natural gas, and other liquids and gases in plumbing and heating systems, air conditioning units, automatic sprinkler systems, and other related uses, and generally meet ASTM A–53 specifications. Standard pipe may also be used for light load-bearing applications, such as for fence tubing, and as structural pipe tubing used for framing and support members for reconstruction or load-bearing purposes in the construction, shipbuilding, trucking, farm equipment, and related industries. Unfinished conduit pipe is also included in these orders. All carbon steel pipes and tubes within the physical description outlined above are included within the scope of these orders, except line pipe, oil country tubular goods, boiler tubing, mechanical tubing, pipe and tube hollows for redraws, finished scaffolding, and finished conduit. Standard pipe that is dual or triple certified/stenciled that enters the U.S. as line pipe of a kind used for oil or gas pipelines is also not included in these orders.

Imports of the products covered by these orders are currently classifiable under the following Harmonized Tariff Schedule (HTS) subheadings: 7306.30.10.00, 7306.30.50.25, 7306.30.50.32, 7306.30.50.40, 7306.30.50.55, 7306.30.50.85, and 7306.30.50.90.

Although the HTS subheadings are provided for convenience and customs purposes, our written description of the scope of these proceedings is dispositive.

Initiation of Review

In accordance with section 751(a)(2)(B) of the Tariff Act of 1930, as amended (the Act) and 19 CFR 351.214(d), we are initiating a new shipper review of the antidumping duty order on pipe and tube from Mexico produced and exported by Conduit. *See* the Memorandum from the Team to the File through Richard O. Weible, Office Director, entitled ''Initiation of AD New Shipper Review: Circular Welded Non-Alloy Steel Pipe and Tube from Mexico—Initiation Checklist,'' dated June 30, 2006. We intend to issue the preliminary results of this review no later than 180 days after the date on which this review is initiated, and the final results within 90 days after the date on which we issue the preliminary results. *See* section 751(a)(2)(B)(iv) of the Act.

Pursuant to 19 CFR 351.214(g)(1)(i)(B), the period of review (POR) for a new shipper review, initiated in the month immediately following the semi-annual anniversary month, will be the six-month period immediately preceding the semi-annual anniversary month. Therefore, the POR for the new shipper review of Conduit is November 1, 2005, through April 30, 2006.

We will instruct U.S. Customs and Border Protection to suspend liquidation of any unliquidated entries of the subject merchandise from Conduit and allow, at the option of the importer, the posting, until completion of the review, of a bond or security in lieu of a cash deposit for each entry of the merchandise exported by Conduit in accordance with 19 CFR 351.214(e). Because Conduit certified that it both produced and exported the subject merchandise, the sale of which is the basis for this new shipper review request, we will permit the bonding privilege only for those entries of subject merchandise for which Conduit is both the producer and the exporter.

Interested parties may submit applications for disclosure under administrative protective order in accordance with 19 CFR 351.305 and 351.306.

This initiation and notice are in accordance with section 751(a)(2)(B) of the Act and 19 CFR 351.214(d).

Dated: June 30, 2006.

Stephen J. Claeys,

Deputy Assistant Secretaryfor Import Administration.

[FR Doc. E6–10736 Filed 7–7–06; 8:45 am]

Billing Code: 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–868]

Folding Metal Tables and Chairs from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (''the Department'') is conducting an administrative review of the antidumping duty order on folding metal tables and chairs (''FMTCs'') from the People's Republic of China (''PRC'') covering the period June 1, 2004, through May 31, 2005. We have preliminarily determined that sales have not been made below normal value (''NV'') by Feili Furniture Development Limited Quanzhou City, Feili Furniture Development Co., Ltd., Feili Group (Fujian) Co., Ltd., Feili (Fujian) Co., Ltd. (collectively ''Feili''), and New–Tec Integration (Xiamen) Co. Ltd. (''New–Tec''). Further, we have preliminarily determined to apply an adverse facts available (''AFA'') rate to all sales and entries of the subject merchandise during the period of review (''POR'') for Anji Jiu Zhou Machinery Co., Ltd. (''Anji Jiu''), Xiamen Zehui Industry Trade Co. (''Xiamen Zehui''), and Yixiang Blow Mold Yuyao Co., Ltd. (''Yixiang''). If these preliminary results are adopted in our final results of this review, we will instruct U.S. Customs and Border Protection (''CBP'') to assess antidumping duties on all appropriate entries of subject merchandise during the POR.

Interested parties are invited to comment on these preliminary results. We intend to issue the final results no later than 120 days from the date of publication of this notice, pursuant to section 751(a)(3)(A) of the Tariff Act of 1930, as amended (''the Act'').

EFFECTIVE DATE: July 10, 2006.

FOR FURTHER INFORMATION CONTACT: Laurel LaCivita or Matthew Quigley, AD/CVD Operations, Office 8, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–4243 or (202) 482–4551, respectively.

SUPPLEMENTARY INFORMATION: On June 27, 2002, the Department published the antidumping duty order on FMTCs from the PRC. *See Antidumping Duty Order: Folding Metal Tables and Chairs From the People's Republic of China*, 67 FR 43277 (June 27, 2002). On June 1, 2005, the Department published a notice of opportunity to request an administrative review of this order. *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review*, 70 FR 31422 (June 1, 2005). In accordance with 19 CFR 351. 213(b)(1), the following requests were made: (1) on June 27, 2005, Cosco Home and Office Products (''Cosco''), a U.S. importer of subject merchandise, requested that the Department conduct an administrative review of Feili and New–Tec; (2) on June 28, 2005, Meco Corporation (''Meco''), a domestic interested party, requested that the Department review Feili's and New–Tec's sales and entries during the POR; (3) on June 30, 2005, FDL, Inc. (''FDL''), a U.S. importer of the subject merchandise, requested that the Department review all sales and entries of Anji Jiu, Xiamen Zehui, and Yixiang.

On July 21, 2005, the Department initiated this administrative review with respect to Feili, New–Tec, Anji Jiu, Xiamen Zehui, and Yixiang. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part*, 70 FR 42028 (July 21, 2005). The Department issued antidumping duty questionnaires to all of the above–named respondents on August 16, 2005.

On September 13, 2005, Feili and New–Tec submitted their Section A questionnaire responses (''AQRs''). New–Tec submitted its Sections C and D questionnaire response (''CQR'' and ''DQR'') on October 11, 2005, and Feili submitted its CQR, DQR, and its sales and cost reconciliation on October 13, 2005.

On November 8, 2005, the Department issued its first supplemental Section A questionnaire to New–Tec, and on November 29, 2005, the Department issued its first supplemental Sections A, C, D, and cost reconciliation questionnaire to Feili. New–Tec submitted its supplemental Section A questionnaire response on November 29, 2005, and Feili submitted its first supplemental questionnaire response (''SQR'') on December 21, 2005. New–Tec submitted its sales and cost reconciliation on January 20, 2006. On February 7, 2006, the Department issued its second supplemental questionnaire to Feili. Feili responded on February 23, 2006. The Department issued its second supplemental questionnaire to New–Tec on March 15, 2006, and its third supplemental questionnaire to Feili on March 22, 2006. On April 12, 2006, Feili submitted its third supplemental questionnaire response (''3rd SQR'') and New–Tec submitted its second supplemental questionnaire response. On May 2, 2006, the Department issued its third supplemental questionnaire to New–Tec. New–Tec provided its 3rd SQR on May 18, 2006. The Department issued its fourth supplemental questionnaire to Feili on May 16, 2006. On May 30, 2006, Feili submitted its fourth supplemental questionnaire response. The Department issued its fifth supplemental questionnaire to Feili on June 7, 2006, and Feili responded on June 19, 2006. Anji Jiu, Xiamen Zehui, and Yixiang did not respond to the Department's questionnaire. *See* ''Adverse Facts Available'' section, below.

The Department requested interested parties to submit surrogate value information on March 21, 2006, and to provide surrogate country selection comments on April 7, 2006. *See* Memorandum to File from Cathy Feig, International Trade Compliance Analyst, through Charles Riggle, Program Manager, AD/CVD Operations, Office 8, ''Surrogate Value Submission Deadline: Folding Metal Tables and Chairs from the Peoples Republic of China'' (March 21, 2006); and Letter from Charles Riggle, Program Manager, AD/CVD Operations, Office 8, to Feili, New–Tec, Cosco, Meco, and Resilient Furniture, ''Re: Administrative Review of Folding Metal Tables and Chairs from the People's Republic of China,'' (April 7, 2006). On April 21, 2006, Feili and Meco provided comments on publicly available information to value the factors of production (''FOP''). None of the interested parties provided comments on the selection of a surrogate country.

On February 28, 2006, the Department published a notice in the **Federal Register** extending the time limit for the preliminary results of review until June 30, 2006. *See Folding Metal Tables and Chairs From the People's Republic of China: Notice of Extension of Time Limit for the Preliminary Results of the Antidumping Duty Administrative Review*, 71 FR 10008, (February 28, 2006).

Period of Review

The POR is June 1, 2004, through May 31, 2005.

Scope of the Order

The products covered by this order consist of assembled and unassembled folding tables and folding chairs made primarily or exclusively from steel or other metal, as described below:

(1) Assembled and unassembled folding tables made primarily or exclusively from steel or other metal (folding metal tables). Folding metal tables include square, round, rectangular, and any other shapes with legs affixed with rivets, welds, or any other type of fastener, and which are made most commonly, but not exclusively, with a hardboard top covered with vinyl or fabric. Folding metal tables have legs that mechanically fold independently of one another, and not as a set. The subject merchandise is commonly, but not exclusively, packed singly, in multiple packs of the same item, or in five piece sets consisting of four chairs and one table. Specifically excluded from the scope of the order regarding folding metal tables are the following:

a. Lawn furniture;

b. Trays commonly referred to as ''TV trays'';

c. Side tables;

d. Child–sized tables;

e. Portable counter sets consisting of rectangular tables 36'' high and matching stools; and,

f. Banquet tables. A banquet table is a rectangular table with a plastic or laminated wood table top approximately 28'' to 36'' wide by 48'' to 96'' long and with a set of folding legs at each end of the table. One set of legs is composed of two individual legs that are affixed together by one or more cross–braces using welds or fastening hardware. In contrast, folding metal tables have legs that mechanically fold independently of one another, and not as a set.

(2) Assembled and unassembled folding chairs made primarily or exclusively from steel or other metal (folding metal chairs). Folding metal chairs include chairs with one or more cross–braces, regardless of shape or size, affixed to the front and/or rear legs with rivets, welds or any other type of fastener. Folding metal chairs include: those that are made solely of steel or other metal; those that have a back pad, a seat pad, or both a back pad and a seat pad; and those that have seats or backs made of plastic or other materials. The subject merchandise is commonly, but not exclusively, packed singly, in multiple packs of the same item, or in five piece sets consisting of four chairs and one table. Specifically excluded from the scope of the order regarding folding metal chairs are the following:

a. Folding metal chairs with a wooden back or seat, or both;

b. Lawn furniture;

c. Stools;

d. Chairs with arms; and

e. Child–sized chairs.

The subject merchandise is currently classifiable under subheadings 9401.71.0010, 9401.71.0030, 9401.79.0045, 9401.79.0050, 9403.20.0010, 9403.20.0030, 9403.70.8010, 9403.70.8020, and 9403.70.8030 of the Harmonized Tariff Schedule of the United States (''HTSUS''). Although the HTSUS subheadings are provided for convenience and customs purposes, the Department's written description of the merchandise is dispositive.

Non–Market Economy Country Status

Neither Feili nor New–Tec contested the Department's treatment of the PRC as a non–market economy (''NME''), and the Department has treated the PRC as an NME country in all past antidumping duty investigations and administrative reviews and continues to do so in this case. *See, e.g., Honey from the People's Republic of China: Final Results and Final Rescission, In Part, of Antidumping Duty Administrative Review*, 71 FR 34893 (June 16, 2006) (''*Honey*''); and *Final Determination of Sales at Less Than Fair Value and Final Partial Affirmative Determination of Critical Circumstances: Diamond Sawblades and Parts Thereof from the People's Republic of China*, 71 FR 29303 (May 22, 2006) (''*Sawblades*''). No interested party in this case has argued that we should do otherwise. Designation as an NME country remains in effect until it is revoked by the Department. *See* Section 771(18)(C)(i) of the Act.

Surrogate Country

Section 773(c)(1) of the Act directs the Department to base NV on the NME producer's FOPs, valued in a surrogate market–economy country or countries considered to be appropriate by the Department. In accordance with section 773(c)(4) of the Act, in valuing the FOPs, the Department shall use, to the extent possible, the prices or costs of the FOPs in one or more market–economy countries that are: (1) at a level of economic development comparable to that of the NME country; and (2) significant producers of comparable merchandise. The sources of the surrogate factor values are discussed under the ''Normal Value'' section below and in the Memorandum from Laurel LaCivita and Matthew Quigley, International Trade Compliance Analysts, through Charles Riggle, Program Manager, to Wendy Frankel, Director, AD/CVD Operations, Office 8, ''Preliminary Results of the 2004–2005 Administrative Review of Folding Metal Tables and Chairs from the People's Republic of China: Surrogate Value Memorandum'' (June 30, 2006) (''Surrogate Value Memorandum'').

The Department has previously determined that India, Indonesia, Sri Lanka, the Philippines, and Egypt are countries comparable to the PRC in terms of economic development. *See* Memorandum from Ron Lorentzen to Wendy Frankel, Director, AD/CVD Enforcement, Office 8, ''Administrative Review of Folding Metal Tables and Chairs ('Tables and Chairs') from the People's Republic of China ('PRC'): Request for a List of Surrogate Countries'' (December 20, 2005) (''Policy Memorandum''). Customarily, we select an appropriate surrogate country from the Policy Memorandum based on the availability and reliability of data from the countries that are significant producers of comparable merchandise. In this case, we have found that India is a significant producer of comparable merchandise. See Memorandum from Laurel LaCivita and Matthew Quigley, International Trade Compliance Analysts, through Charles Riggle Program Manager, to Wendy Frankel, Director, AD/CVD Operations, Office 8, ''Antidumping Administrative Review of Folding Metal Tables and Chairs: Selection of a Surrogate Country,'' (June 30, 2006) (''Surrogate Country Memorandum'').

The Department used India as the primary surrogate country and, accordingly, has calculated NV using Indian prices to value the PRC producers' FOPs, when available and appropriate. *See* Surrogate Country Memorandum and Surrogate Value Memorandum. We have obtained and relied upon publicly available information wherever possible.

In accordance with 19 CFR 351.301(c)(3)(ii), for the final results in an antidumping administrative review, interested parties may submit publicly available information to value factors of production within 20 days after the date of publication of the preliminary results of review.

Separate Rates

In proceedings involving NME countries, the Department begins with a rebuttable presumption that all companies within the country are subject to government control, and thus, should be assigned a single antidumping duty deposit rate. It is the Department's policy to assign all exporters of subject merchandise subject

to review in an NME country a single rate unless an exporter can demonstrate that it is sufficiently independent of government control to be entitled to a separate rate. *See, e.g., Honey from the People's Republic of China: Preliminary Results and Partial Rescission of Antidumping Duty Administrative Review*, 70 FR 74764, 74765 (December 16, 2005) (unchanged in the final results); and *Sawblades*, 71 FR at 29307.

We have considered whether each reviewed company based in the PRC is eligible for a separate rate. The Department's separate–rate test to determine whether the exporters are independent from government control does not consider, in general, macroeconomic/border–type controls, e.g., export licenses, quotas, and minimum export prices, particularly if these controls are imposed to prevent dumping. The test focuses, rather, on controls over the investment, pricing, and output decision–making process at the individual firm level. *See, e.g., Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the People's Republic of China: Final Results of Antidumping Administrative Review*, 62 FR 61276, 61279 (November 17, 1997); and *Preliminary Determination of Sales at Less than Fair Value: Honey from the People's Republic of China*, 60 FR 14725,14727–28 (March 20, 1995).

To establish whether an exporter is sufficiently independent of government control to be entitled to a separate rate, the Department analyzes the exporter in light of select criteria, discussed below. *See Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China*, 56 FR 20585, 22587 (May 6, 1991) (''*Sparklers*''); and *Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China*, 59 FR 22585 (May 2, 1994) (''*Silicon Carbide*''). Under this test, exporters in NME countries are entitled to separate, company–specific margins when they can demonstrate an absence of government control over exports, both in law (''*de jure*'') and in fact (''*de facto*'').

Feili and New–Tec each provided company–specific separate–rate information and stated that each met the standards for the assignment of separate rates. Anji Jiu, Xiamen Zehui, and Yixiang did not submit any information to establish their entitlement to a separate rate. Feili reported that it is wholly owned by market–economy entities. *See* Feili's AQR, at 2 and Exhibit A–3. Therefore, a separate rates analysis is not necessary to determine whether Feili's export activities are independent from government control. *See e.g., Brake Rotors From the People's Republic of China: Preliminary Results of the Tenth New Shipper Review*, 69 FR 30875, 30876 (June 1, 2004) (unchanged in final results); *Notice of Final Determination of Sales at Less Than Fair Value: Creatine Monohydrate From the People's Republic of China*, 64 FR 71104 (December 20, 1999); *Preliminary Results of First New Shipper Review and First Antidumping Duty Administrative Review: Certain Preserved Mushrooms From the People's Republic of China*, 65 FR 66703, 66705 (November 7, 2000) (unchanged in the final results of review); and *Notice of Final Determination of Sales at Less Than Fair Value: Bicycles From the People's Republic of China*, 61 FR 19026, 19027 (April 30, 1996) (''*Bicycles*''). For New Tec, a separate rates analysis is necessary to determine whether its export activities are independent from government control.

A. *Absence of De Jure Control*

The Department considers the following *de jure* criteria in determining whether an individual company may be granted a separate rate: (1) an absence of restrictive stipulations associated with an individual exporter's business and export licenses; (2) any legislative enactments decentralizing control of companies; or (3) any other formal measures by the government decentralizing control of companies. *See Sparklers*, 56 FR 20588.

New–Tec is a joint venture owned by New–Tec International Inc., a South Korean company, and Xiamen Integration Co., Ltd., a PRC company. New–Tec has placed documents on the record to demonstrate the absence of *de jure* control including its list of shareholders, business license, and the Company Law of the People's Republic of China, as revised October 27, 2005 (''Company Law''). Other than limiting New–Tec to activities referenced in the business license, we found no restrictive stipulations associated with the license. In addition, in previous cases the Department has analyzed the Company Law and found that it establishes an absence of *de jure* control. *See, e.g., Certain Non–Frozen Apple Juice Concentrate from the People's Republic of China: Final Results, Partial Recision and Termination of a Partial Deferral of the 2002–2003 Administrative Review*, 69 FR 65148, 65150 (November 10, 2004). We have no information in this segment of the proceeding that would cause us to reconsider this determination. Therefore, based on the foregoing, we have preliminarily found an absence of *de jure* control for New–Tec.

B. *Absence of De Facto Control*

As stated in previous cases, there is some evidence that certain enactments of the PRC central government have not been implemented uniformly among different sectors and/or jurisdictions in the PRC. *See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Certain Preserved Mushrooms from the People's Republic of China*, 63 FR 72255, 72257 (December 31, 1998). Therefore, the Department has preliminarily determined that an analysis of *de facto* control is critical in determining whether respondents are, in fact, subject to a degree of government control that would preclude the Department from assigning separate rates. The Department typically considers four factors in evaluating whether each respondent is subject to *de facto* government control of its export functions: (1) whether the exporter sets its own export prices independent of the government and without the approval of a government authority; (2) whether the respondent has authority to negotiate and sign contracts, and other agreements; (3) whether the respondent has autonomy from the government in making decisions regarding the selection of its management; and (4) whether the respondent retains the proceeds of its export sales and makes independent decisions regarding disposition of profits or financing of losses. *See, e.g., Final Determination of Sales at Less Than Fair Value: Furfuryl Alcohol From the People's Republic of China*, 60 FR 22544, 22545 (May 8, 1995).

With regard to *de facto* control, New–Tec reported that: (1) it independently set prices to the United States through negotiations with customers and these prices are not subject to review by any government organization; (2) it did not coordinate with other exporters or producers to set the price or to determine to which market the companies will sell subject merchandise; (3) the PRC Chamber of Commerce does not coordinate the export activities of New–Tec; (4) its general manager has the authority to contractually bind it to sell subject merchandise; (5) its board of directors appoint its general manager; (6) there is no restriction on its use of export revenues; (7) its shareholders ultimately determine the disposition of respective profits, and New–Tec has not had a loss in the last two years; and (8) none of New–Tec's board members or managers is a government official. Additionally, New–Tec's questionnaire responses did not suggest that pricing is coordinated among exporters. Furthermore, our

analysis New–Tec's questionnaire responses reveals no other information indicating government control of its export activities. Therefore, based on the information on the record, we preliminarily determine that there is an absence of *de facto* government control with respect tor New–Tec's export functions and that New–Tec has met the criteria for the application of a separate rate.

Adverse Facts Available

Sections 776(a)(1) and (2) of the Act provide that the Department shall apply ''facts otherwise available'' if, *inter alia*, necessary information is not on the record or an interested party or any other person: (A) withholds information that has been requested; (B) fails to provide information within the deadlines established, or in the form and manner requested by the Department, subject to subsections (c)(1) and (e) of section 782 of the Act; (C) significantly impedes a proceeding; or (D) provides information that cannot be verified as provided by section 782(i) of the Act.

Where the Department determines that a response to a request for information does not comply with the request, section 782(d) of the Act provides that the Department will so inform the party submitting the response and will, to the extent practicable, provide that party the opportunity to remedy or explain the deficiency. If the party fails to remedy the deficiency within the applicable time limits and subject to section 782(e) of the Act, the Department may disregard all or part of the original and subsequent responses, as appropriate. Section 782(e) of the Act provides that the Department ''shall not decline to consider information that is submitted by an interested party and is necessary to the determination but does not meet all applicable requirements established by the administering authority'' if the information is timely, can be verified, is not so incomplete that it cannot be used, and if the interested party acted to the best of its ability in providing the information. Where all of these conditions are met, the statute requires the Department to use the information if it can do so without undue difficulties.

Section 776(b) of the Act further provides that the Department may use an adverse inference in applying the facts otherwise available when a party has failed to cooperate by not acting to the best of its ability to comply with a request for information. Section 776(b) of the Act also authorizes the Department to use as AFA information derived from the petition, the final determination, a previous administrative review, or other information placed on the record.

Section 776(c) of the Act provides that, when the Department relies on secondary information rather than on information obtained in the course of an investigation or review, it shall, to the extent practicable, corroborate that information from independent sources that are reasonably at its disposal. Secondary information is defined as ''[i]nformation derived from the petition that gave rise to the investigation or review, the final determination concerning the subject merchandise, or any previous review under section 751 concerning the subject merchandise.'' *See Statement of Administrative Action* (''*SAA*'') accompanying the Uruguay Round Agreements Act, H. Doc. No. 316, 103d Cong., 2d Session at 870 (1994). Corroborate means that the Department will satisfy itself that the secondary information to be used has probative value. *See SAA* at 870. To corroborate secondary information, the Department will, to the extent practicable, examine the reliability and relevance of the information to be used. The SAA emphasizes, however, that the Department need not prove that the selected facts available are the best alternative information. *See SAA* at 869.

For the reasons discussed below, we determine that, in accordance with sections 776(a)(2) and 776(b) of the Act, the use of AFA is appropriate for the preliminary results for the PRC–wide entity, including Anji Jiu, Xiamen Zehui, and Yixiang.

Anji Jiu, Xiamen Zehui, and Yixiang

Anji Jiu, Xiamen Zehui, and Yixiang did not respond to our August 16, 2005, questionnaire. In the *Initiation Notice*, the Department stated that if one of the companies on which we initiated a review does not qualify for a separate rate, all other exporters of FMTCs from the PRC who have not qualified for a separate rate are deemed to be covered by this review as part of the single PRC–wide entity of which the named exporter is a part. *See Initiation Notice* at n.1. Because Anji Jiu, Xiamen Zehui, and Yixiang did not submit any information to establish their eligibility for a separate rate, we find they are deemed to be part of the PRC–wide entity. *See* Separate Rates section above.

The PRC–Wide Rate and Use of AFA

In addition, because we have determined that Anji Jiu, Xiamen Zehui, and Yixiang are not entitled to separate rates and are now part of the PRC–wide entity, the PRC–wide entity is now under review. We further find that because the PRC–wide entity (including Anji Jiu, Xiamen Zehui, and Yixiang) failed to provide the requested information in the administrative review, the Department, pursuant to section 776(a) of the Act, has applied a dumping margin for the PRC–wide entity using the facts otherwise available on the record. Furthermore, because we have determined that the PRC–wide entity (including Anji Jiu, Xiamen Zehui, and Yixiang) has failed to cooperate to the best of its ability, the Department has used an adverse inference in making its determination, pursuant to section 776(b) of the Act.

Selection of the Adverse Facts Available Rate

In deciding which facts to use as AFA, section 776(b) of the Act and 19 CFR 351.308(c)(1) authorize the Department to rely on information derived from (1) the petition, (2) a final determination in the investigation, (3) any previous review or determination, or (4) any information placed on the record. It is the Department's practice to select, as AFA, the highest calculated rate in any segment of the proceeding. *See, e.g., Certain Cased Pencils from the People's Republic of China; Notice of Preliminary Results of Antidumping Duty Administrative Review and Intent to Rescind in Part*, 70 FR 76755, 76761 (December 28, 2005).

The Court of International Trade (''CIT'') and the Court of Appeals for the Federal Circuit (''Fed. Cir.'') have consistently upheld the Department's practice. *See Rhone Poulenc, Inc. v. United States*, 899 F. 2d 1185, 1190 (Fed. Cir. 1990) (upholding the Department's presumption that the highest margin was the best information of current margins) (''*Rhone Poulenc*''); *NSK Ltd. v. United States*, 346 F. Supp. 2d 1312, 1335 (CIT 2004) (upholding a 73.55 percent total AFA rate, the highest available dumping margin from a different respondent in a less–than-fair–value (''LTFV'') investigation); *Kompass Food Trading International v. United States*, 24 CIT 678, 683 (2000) (upholding a 51.16 percent total AFA rate, the highest available dumping margin from a different, fully cooperative respondent); and *Shanghai Taoen International Trading Co., Ltd. v. United States*, 360 F. Supp. 2d 1339, 1348 (CIT 2005) (upholding a 223.01 percent total AFA rate, the highest available dumping margin from a different respondent in a previous administrative review).

The Department's practice when selecting an adverse rate from among the possible sources of information is to ensure that the margin is sufficiently

adverse ''as to effectuate the purpose of the facts available role to induce respondents to provide the Department with complete and accurate information in a timely manner.'' *See Notice of Final Determination of Sales at Less than Fair Value: Static Random Access Memory Semiconductors From Taiwan;* 63 FR 8909, 8932 (February 23, 1998). The Department's practice also ensures ''that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully.'' *See SAA* at 870. *See also, Brake Rotors From the People's Republic of China: Final Results and Partial Rescission of the Seventh Administrative Review; Final Results of the Eleventh New Shipper Review*, 70 FR 69937, 69939 (November 18, 2005). In choosing the appropriate balance between providing respondents with an incentive to respond accurately and imposing a rate that is reasonably related to the respondents' prior commercial activity, selecting the highest prior margin ''reflects a common sense inference that the highest prior margin is the most probative evidence of current margins, because, if it were not so, the importer, knowing of the rule, would have produced current information showing the margin to be less.'' *See Rhone Poulenc*, 899 F. 2d at 1190.

Due to Anji Jiu's, Xiamen Zehui's, and Yixiang's failure to cooperate in this administrative review, we have preliminarily assigned the PRC–wide entity, of which they are deemed to be a part, an AFA rate of 70.71 percent, which is the PRC–wide rate determined in the investigation and the rate currently applicable to the PRC–wide entity. *See Notice of Amended Final Determination of Sales at Less Than Fair Value: Folding Metal Tables and Chairs From the People's Republic of China*, 67 FR 34898, (May 16, 2002) (''*FMTC Amended Final Determination*'').

The Department preliminarily determines that this information is the most appropriate from the available sources to effectuate the purposes of AFA. The Department's reliance on the PRC–wide rate from the original investigation to determine an AFA rate is subject to the requirement to corroborate secondary information. *See* Section 776(c) of the Act and the ''Corroboration of Secondary Information'' section below.

Corroboration of Secondary Information

Section 776(c) of the Act provides that, where the Department selects from among the facts otherwise available and relies on ''secondary information,'' the Department shall, to the extent practicable, corroborate that information from independent sources reasonably at the Department's disposal. Secondary information is described in the *SAA* as ''information derived from the petition that gave rise to the investigation or review, the final determination concerning the subject merchandise, or any previous review under section 751 concerning the subject merchandise.'' *See* SAA at 870. The *SAA* states that ''corroborate'' means to determine that the information used has probative value. The Department has determined that to have probative value information must be reliable and relevant. *See Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From Japan, and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, From Japan; Preliminary Results of Antidumping Duty Administrative Reviews and Partial Termination of Administrative Reviews*, 61 FR 57391, 57392 (November 6, 1996). The SAA also states that independent sources used to corroborate such evidence may include, for example, published price lists, official import statistics and customs data, and information obtained from interested parties during the particular investigation. *See SAA* at 870. *See also, Notice of Preliminary Determination of Sales at Less Than Fair Value: High and Ultra–High Voltage Ceramic Station Post Insulators from Japan*, 68 FR 35627, 35629 (June 16, 2003); and *Notice of Final Determination of Sales at Less Than Fair Value: Live Swine From Canada*, 70 FR 12181, 12183 (March 11, 2005) (''*Live Swine from Canada*'').

With respect to the relevance aspect of corroboration, the Department will consider information reasonably at its disposal to determine whether a margin continues to have relevance. Where circumstances indicate that the selected margin is not appropriate as AFA, the Department will disregard the margin and determine an appropriate margin. For example, the Department disregarded the highest margin as adverse best information available (the predecessor to facts available) because it was based on another company's uncharacteristic business expense that resulted in an unusually high margin. *See Fresh Cut Flowers From Mexico; Final Results of Antidumping Duty Administrative Review*, 61 FR 6812, 6814 (February 22, 1996) (''*Fresh Cut Flowers from Mexico*''). Similarly, the Department does not apply a margin that has been discredited. *See D&L Supply Co. v. United States*, 113 F. 3d 1220, 1223–4 (Fed. Cir. 1997) (finding that the Department will not use a margin that has been judicially invalidated).

With regard to the relevance of the rate used, the Department notes that the rate used is the rate currently applicable to the PRC–wide entity and there is no information that indicates this rate is no longer relevant to the PRC–wide entity. In addition, we compared the margin calculations of Feili and New–Tec in this administrative review with the PRC–wide entity margin from the LTFV investigation and used in the first and second administrative reviews of this case. The Department found that the margin of 70.71 percent was within the range of the highest margins calculated for the respondents on the record of this administrative review. *See* Memorandum to the File from Laurel LaCivita and Matthew Quigley, International Trade Compliance Analysts, through Charles Riggle, Program Manager, AD/CVD Operations, Office 8, ''Folding Metal Tables and Chairs from the PRC: Corroboration of the PRC–wide Adverse Facts–Available Rate,'' (June 30, 2006) (''Corroboration Memorandum''). Because the record of this administrative review contains margins within the range of 70.71 percent, this further supports that this rate continues to be relevant for use in this administrative review.

As we have determined, to the extent practicable, that the margin selected is both reliable and relevant, we determine that it has probative value. As a result, the Department determines that the margin is corroborated within the meaning of section 776(c) of the Act for the purposes of this administrative review and may reasonably be applied to the PRC–wide entity as AFA. Accordingly, we determine that the highest rate from any segment of this administrative proceeding, 70.71 percent, meets the corroboration criterion established in section 776(c) of the Act that secondary information have probative value.

Because these are the preliminary results of review, the Department will consider all margins on the record at the time of the final results of review for the purpose of determining the most appropriate final margin for the PRC–wide entity. *See Notice of Preliminary Determination of Sales at Less Than Fair Value: Solid Fertilizer Grade Ammonium Nitrate From the Russian Federation*, 65 FR 1139, 1141 (January 7, 2000).

Date of Sale

Section 351.401(i) of the Department's regulations states that:

in identifying the date of sale of the subject merchandise or foreign like product, the Secretary normally will use the date of invoice, as recorded in the exporter or producer's records kept in the normal course of business. However, the Secretary may use a date other than the date of invoice if the Secretary is satisfied that a different date better reflects the date on which the exporter or producer establishes the material terms of sale.

See also, Allied Tube and Conduit Corp. v. United States, 132 F. Supp. 2d 1087, 1090–1093 (CIT 2001) (upholding the Department's rebuttable presumption that invoice date is the appropriate date of sale). After examining the questionnaire responses and the sales documentation placed on the record by Feili and New–Tec, we preliminarily determine that invoice date is the most appropriate date of sale for each respondent. We made this determination based on statements on the record that indicate that Feili's and New–Tec's invoices establish the material terms of sale to the extent required by our regulations. *See* Feili CQR at C–11 and New–Tec CQR at C–12. Nothing on the record rebuts the presumption that invoice date should be the date of sale. *See Notice of Preliminary Determination of Sales at Less Than Fair Value: Saccharin From the People's Republic of China*, 67 FR 79049, 79054 (December 27, 2002).

Normal Value Comparisons

To determine whether sales of FMTCs to the United States by Feili and New–Tec were made at less than NV, we compared export price (''EP'') to NV, as described in the ''Export Price,'' and ''Normal Value'' sections of this notice, pursuant to section 771(35) of the Act.

Export Price

Because Feili and New–Tec sold subject merchandise to unaffiliated purchasers in the United States prior to importation into the United States (or to unaffiliated resellers outside the United States with knowledge that the merchandise was destined for the United States) and use of a constructed–export-price methodology is not otherwise indicated, we have used EP in accordance with section 772(a) of the Act.

We calculated EP based on the FOB or delivered price to unaffiliated purchasers for Feili and New–Tec. From this price, we deducted amounts for foreign inland freight, brokerage and handling, and where applicable, air freight, pursuant to section 772(c)(2)(A) of the Act. *See* Memorandum to the File from Laurel LaCivita, Senior International Trade Compliance Analyst, through Charles Riggle, Program Manager, AD/CVD Operations, Office 8, ''Analysis for the Preliminary Results of the 2004–2005 Administrative Review of Folding Metal Tables and Chairs from the People's Republic of China: Feili Furniture Development Limited Quanzhou City, Feili Furniture Development Co., Ltd., Feili Group (Fujian) Co., Ltd., Feili (Fujian) Co., Ltd. (collectively, 'Feili')'' (June 30, 2006) (''Feili Preliminary Analysis Memorandum''); and Memorandum to the File from Matthew Quigley, International Trade Compliance Analyst, through Charles Riggle, Program Manager, AD/CVD Operations, Office 8, ''Analysis for the Preliminary Results of the 2004–2005 Administrative Review of Folding Metal Tables and Chairs from the People's Republic of China: New–Tec Integration (Xiamen) Co. Ltd. (''New–Tec'')'' (June 30, 2006) (''New–Tec Preliminary Analysis Memorandum'').

The Department used two sources to calculate a surrogate value for domestic brokerage expenses. The Department averaged December 2003–November 2004 data contained in Essar Steel's February 28, 2005, public version response submitted in the antidumping duty administrative review of hot–rolled carbon steel flat products from India. *See Certain Hot–Rolled Carbon Steel Flat Products From India: Notice of Preliminary Results of Antidumping Duty Administrative Review*, 71 FR 2018 (January 12, 2006). This data was averaged with the February 2004–January 2005 data contained in Agro Dutch Industries Limited's (''Agro Dutch'') May 24, 2005, public version response submitted in the administrative review of the antidumping duty order on certain preserved mushrooms from India. *See Certain Preserved Mushrooms From India: Final Results of Antidumping Duty Administrative Review*, 70 FR 37757 (June 30, 2005); and *Notice of Preliminary Determination of Sales at Less Than Fair Value, Affirmative Critical Circumstances, In Part, and Postponement of Final Determination: Certain Lined Paper Products from the People's Republic of China*, 71 FR 19695, 19704 (April 17, 2006) (utilizing this same data). The brokerage expense data reported by Essar Steel and Agro Dutch in their public versions are ranged data. The Department first derived an average per–unit amount from each source. Then the Department adjusted each average rate for inflation. Finally, the Department averaged the two per–unit amounts to derive an overall average rate for the POR. *See* Surrogate Value Memorandum at 8 and Attachment XVI.

To value truck freight, we used the freight rates published by Indian Freight Exchange, available at http://www.infreight.com. The truck freight rates are contemporaneous with the POR; therefore, we made no adjustments for inflation. Where applicable, we valued air freight using the rates published in the UPS website: http://www.ups.com. We adjusted these rates for inflation using the U.S. Consumer Price Index published by the U.S. Department of Labor, Bureau of Labor Statistics, available on http://data.bls.gov because the surrogate values for air freight were derived from U.S. sources. See Surrogate Value Memorandum at 7–8 and Attachment XVII.

Zero–Priced Transactions

During the course of this review, both Feili and New–Tec reported a significant number of zero–priced transactions to their U.S. customers. *See* Feili's 1st SQR at 9 and Exhibit 13; and New–Tec's 3rd SQR at Exhibit 9. An analysis of the Section C databases provided by each company reveals that both companies made a significant number of zero–priced transactions with customers that had purchased the same merchandise in commercial quantities. *See* Feili Preliminary Analysis Memorandum at Attachment I; and New–Tec Preliminary Analysis Memorandum at Attachment I. In the final results of the second administrative review of FMTCs, we included New–Tec's zero–priced transactions in the margin calculation stating that the record demonstrated that: (1) New–Tec provided many pieces of the same product, indicating that these ''samples'' did not primarily serve for evaluation or testing of the merchandise; (2) New–Tec provided significant numbers of the same product to its U.S. customer while that customer was purchasing that same product; (3) New–Tec provided ''samples'' to the same customers to whom it was selling the same products in commercial quantities; (4) New–Tec acknowledged that it gave these products at zero price to its U.S. customers (already purchasing the same items) to sell to their own customers. *See FMTC Second Review* and accompanying Issues and Decision Memorandum at Comment 4. As a result, we concluded that New–Tec was not providing samples to entice its U.S. customers to buy the product. *Ibid*.

The Federal Circuit has not required the Department to exclude zero–priced or *de minimis* sales from its analysis, but rather, has defined a sale as requiring ''both a transfer of ownership to an unrelated party and consideration.'' *See NSK Ltd. v. United States*, 115 F.3d 965, 975 (Fed. Cir. 1997). The CIT in *NSK Ltd. v. United States* stated that it saw ''little reason in supplying and re–supplying and yet re–supplying the same product to the same customer in order to solicit sales if the supplies are made in reasonably short periods of time,'' and that ''it would be even less logical to supply a sample to a client that has made a recent bulk purchase of the very item being sampled by the client.'' *NSK Ltd v. United States*, 217 F. Supp. 2d 1291, 1311–1312 (CIT 2002). Furthermore, the Courts have consistently ruled that the burden rests with a respondent to demonstrate that it received no consideration in return for its provision of purported samples. *See, e.g., Zenith Electronics Corp. v. United States*, 988 F. 2d 1573, 1583 (Fed. Cir. 1993) (explaining that the burden of evidentiary production belongs ''to the party in possession of the necessary information''). *See, also, Tianjin Machinery Import & Export Corp. v. United States*, 806 F. Supp. 1008, 1015 (CIT 1992) (''The burden of creating an adequate record lies with respondents and not with {the Department}.'') (citation omitted). Moreover, ''{e}ven where the Department does not ask a respondent for specific information that would enable it to make an exclusion determination in the respondent's favor, the respondent has the burden of proof to present the information in the first place with its request for exclusion.'' *See Ball Bearings and Parts Thereof from France, Germany, Italy, Japan, Singapore, and the United Kingdom: Final Results of Antidumping Duty Administrative Reviews*, 70 FR 54711 (September 16, 2005), and accompanying Issues and Decision Memorandum at Comment 8 (citing *NTN Bearing Corp. of America. v. United States*, 997 F. 2d 1453, 1458 (Fed. Cir. 1993)).

An analysis of Feili's and New–Tec's Section C computer sales listings reveals that both companies provided zero–priced merchandise to the same customers to whom they were selling or had sold the same products in commercial quantities, with the exception of one of Feili's customers, who did not make any purchases of subject merchandise during the POR. *See* Feili Preliminary Analysis Memorandum at Attachment I, Surrogate Value Memorandum, and New–Tec Preliminary Analysis Memorandum at Attachment I. In addition, Feili stated that it sometimes provided samples to its customers so that those customers could provide samples to their customers in turn. *See* Feili 3rd SQR at 2. Consequently, based on the facts cited above, the guidance of past CIT decisions, and consistent with the decision in the previous review, from the preliminary results of this review, we have not excluded zero–priced transactions from the margin calculation of this case for either Feili or New–Tec, with the exception of certain sales Feili made to a new customer that did not purchase any subject merchandise during the POR.

Normal Value

Section 773(c)(1) of the Act provides that, in the case of an NME, the Department shall determine NV using an FOP methodology if the merchandise is exported from an NME and the information does not permit the calculation of NV using home–market prices, third–country prices, or constructed value under section 773(a) of the Act. The Department will base NV on FOP because the presence of government controls on various aspects of these economies renders price comparisons and the calculation of production costs invalid under our normal methodologies. Therefore, we calculated NV based on FOP in accordance with sections 773(c)(3) and (4) of the Act and 19 CFR 351.408(c).

The FOPs include: (1) hours of labor required; (2) quantities of raw materials employed; (3) amounts of energy and other utilities consumed; and (4) representative capital costs. We used the FOPs reported by respondents for materials, energy, labor, by–products, and packing.

In accordance with 19 CFR 351.408(c)(1), the Department will normally use publicly available information to value the FOPs, but when a producer sources an input from a market–economy country and pays for it in market–economy currency, the Department will normally value the factor using the actual price paid for the input. *See* 19 CFR 351.408(c)(1); *see also, Lasko Metal Products v. United States*, 43 F.3d 1442, 1445–1446 (Fed. Cir. 1994) (affirming the Department's use of market–based prices to value certain FOPs). Feili and New–Tec each reported that a significant portion of their purchases of cold–rolled steel, hot–rolled steel, steel wire rod, polypropylene plastic resin, polyurethane foam, powder coating, washers, screws, rivets, fibreboard, polyester fabric, corrugated paper and cartons were sourced from market–economy countries and paid for in market–economy currencies. *See* Feili's DQR at D–7 and New–Tec's DQR at D–7. Pursuant to 19 CFR 351.408(c)(1), we used the actual price paid by respondents for inputs purchased from a market–economy supplier and paid for in a market–economy currency, except when prices may have been distorted by findings of dumping by the PRC and/or subsidies.

With regard to both the Indian import–based surrogate values and the market–economy input values, we have disregarded prices that we have reason to believe or suspect may be subsidized. We have reason to believe or suspect that prices of inputs from India, Indonesia, South Korea, and Thailand may have been subsidized. We have found in other proceedings that these countries maintain broadly available, non–industry-specific export subsidies and, therefore, it is reasonable to infer that all exports to all markets from these countries may be subsidized. *See Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Notice of Preliminary Results and Preliminary Partial Rescission of Antidumping Duty Administrative Review*, 70 FR 54007, 54011 (September 13, 2005) (unchanged in the final results); *Automotive Replacement Glass Windshields From the People's Republic of China: Final Results of Administrative Review*, 69 FR 61790 (October 21, 2004) and accompanying Issues and Decision Memorandum at Comment 5; and *China National Machinery Import & Export Corporation v. United States*, 293 F. Supp. 2d 1334 (CIT 2003), as affirmed by the Federal Circuit, 104 Fed. Appx. 183 (Fed. Cir. 2004). We are also guided by the statute's legislative history that explains that it is not necessary to conduct a formal investigation to ensure that such prices are not subsidized. *See* H.R. Rep. 100–576 at 590 (1988). Rather, the Department was instructed by Congress to base its decision on information that is available to it at the time it is making its determination. Therefore, we have not used prices from these countries either in calculating the Indian import–based surrogate values or in calculating market–economy input values. In instances where a market–economy input was obtained solely from suppliers located in these countries, we used Indian import–based surrogate values to value the input. *See* Feili Preliminary Analysis Memorandum and New–Tec Preliminary Analysis Memorandum.

Furthermore, we did not use any market–economy purchases of polyvinyl chloride from Taiwan, on which the

PRC has an outstanding antidumping duty order. *See* World Trade Organization's Committee on Anti–Dumping Practices Semi–Annual Report Under Article 16.4 of the Agreement, G/ADP/N/CHN, for the period 1 July – 31 December 2005, available at www.wto.org. *See* Surrogate Value Memorandum at Attachment XIX.

Factor Valuations

In accordance with section 773(c) of the Act, we calculated NV based on the FOPs reported by respondents for the POR. To calculate NV, the reported per–unit factor quantities were multiplied by publicly available Indian surrogate values (except as noted below). In selecting the surrogate values, we considered the quality, specificity, and contemporaneity of the data. As appropriate, we adjusted input prices by including freight costs to render them delivered prices. Specifically, we added to Indian import surrogate values a surrogate freight cost using the shorter of the reported distance from the domestic supplier to the factory or the distance from the nearest seaport to the factory where appropriate (*i.e.*, where the sales terms for the market–economy inputs were not delivered to the factory). This adjustment is in accordance with the decision of the Federal Circuit in *Sigma Corp. v. United States. Sigma Corp. v. United States*, 117 F. 3d 1401, 1408 (Fed. Cir. 1997). For a detailed description of all surrogate values used for respondents, see the Surrogate Value Memorandum.

Except as noted below, we valued raw material inputs using the weighted–average unit import values derived from the Monthly Statistics of the Foreign Trade of India, as published by the Directorate General of Commercial Intelligence and Statistics of the Ministry of Commerce and Industry, Government of India in the World Trade Atlas, available at http://www.gtis.com/wta.htm (''WTA''). The WTA data are reported in rupees and are contemporaneous with the POR. *See also*, Surrogate Value Memorandum at Attachment V. Where necessary, we adjusted the surrogate values to reflect inflation/deflation using the Indian Wholesale Price Index (''WPI'') as published on the Reserve Bank of India (''RBI'') website, available at www.rbi.org.in. We further adjusted these prices to account for freight costs incurred between the suppler and respondent. We used the freight rates published by Indian Freight Exchange available at http://www.infreight.com, to value truck freight. We valued rail freight using the freight rates published by the Indian Railways and available at http://www.indianrailways.gov.in/railway/freightrates/freight__charges__2003.htm. The truck and rail freight rates are contemporaneous with the POR. Therefore, we made no adjustments for inflation. For a complete description of the factor values we used, see the Surrogate Value Memorandum.

Feili and New–Tec reported they had market–economy purchases representing a meaningful portion of the total purchases of each respective input for cold–rolled steel, hot–rolled steel, steel wire rod, polypropylene plastic resin, polyurethane foam, powder coating, washers, screws, rivets, fibreboard, vinyl sheet, polyester fabric, corrugated paper and cartons. Therefore, we valued these inputs using their respective per–kilogram market–economy purchase prices. See New–Tec Preliminary Analysis Memorandum. Where applicable, we also adjusted these values to account for freight costs incurred between the supplier and respondent. *See* Surrogate Value Memorandum, Feili Preliminary Analysis Memorandum, and New–Tec Preliminary Analysis Memorandum.

To value hydrochloric acid used in the production of FMTCs, we used per–kilogram import values obtained from *Chemical Weekly*. We adjusted this value for taxes and to account for freight costs incurred between the supplier and each respondent, respectively. We used per–kilogram import values obtained from the WTA for all other material inputs used in the production of FMTCs.

To value diesel oil and liquid petroleum gas, we used per–kilogram values obtained from Bharat Petroleum published on December 2003 and used in the *FMTC Second Review*. We also made adjustments to account for inflation and freight costs incurred between the supplier and respondents.

To value electricity, we used the 2000 electricity price data from International Energy Agency, Energy Prices and Taxes - Quarterly Statistics (First Quarter 2003), available at http://www.eia.doe.gov/emeu/international/elecprii.html, adjusted for inflation.

To value water, we used the Revised Maharashtra Industrial Development Corporation (''MIDC'') water rates for June 1, 2003, available at http://www.midcindia.com/water–supply, adjusted for inflation.

For direct labor, indirect labor and packing labor, consistent with 19 CFR 351.408(c)(3), we used the PRC regression–based wage rate as reported on Import Administration's home page. *See* Expected Wages of Selected NME Countries (revised November 2005) (available at http://ia.ita.doc.gov/wages). The source of these wage rate data on the Import Administration's web site is the *Yearbook of Labour Statistics 2003*, ILO, (Geneva: 2003), Chapter 5B: Wages in Manufacturing. The years of the reported wage rates range from 1998 to 2003. Because this regression–based wage rate does not separate the labor rates into different skill levels or types of labor, we have applied the same wage rate to all skill levels and types of labor reported by each respondent.

For factory overhead, selling, general, and administrative expenses (''SG&A''), and profit values, we used information from Godrej and Boyce Manufacturing Co. Ltd. for the year ending March 31, 2005. From this information, we were able to determine factory overhead as a percentage of the total raw materials, labor and energy (''ML&E'') costs; SG&A as a percentage of ML&E plus overhead (*i.e.*, cost of manufacture); and the profit rate as a percentage of the cost of manufacture plus SG&A. *See* Surrogate Value Memorandum for a full discussion of the calculation of these ratios.

For packing materials, we used the per–kilogram values obtained from the WTA and made adjustments to account for freight costs incurred between the PRC supplier and respondent.

Currency Conversion

We made currency conversions into U.S. dollars, in accordance with section 773A(a) of the Act, based on the exchange rates in effect on the dates of the U.S. sales, as certified by the Federal Reserve Bank.

Preliminary Results of Review

We preliminarily determine that the following weighted–average dumping margins exist:

Manufacturer/Exporter	Margin (Percent)
Feili*	0.35
New–Tec*	0.11
The PRC–wide Entity**	70.71

* *de minimis*

** including Anji Jiu, Xiamen Zehui, and Yixiang

Disclosure

We will disclose the calculations used in our analysis to parties to this proceeding within five days of the publication date of this notice. *See* 19 CFR 351.224(b). Interested parties are invited to comment on the preliminary results and may submit case briefs and/or written comments within 30 days of the date of publication of this notice. *See* 19 CFR 351.309(c)(ii). Any interested party may request a hearing

within 30 days of publication of this notice. *See* 19 CFR 351.310(c). Any hearing, if requested, will be held 42 days after the date of publication of this notice. *See* 19 CFR 351.310(d). Rebuttal briefs and rebuttals to written comments, limited to issues raised in such briefs or comments, may be filed no later than 35 days after the date of publication. See 19 CFR 351.309(d). The Department requests that parties submitting written comments also provide the Department with an additional copy of those comments on diskette. The Department will issue the final results of this administrative review, which will include the results of its analysis of issues raised in any such comments, within 120 days of publication of these preliminary results, pursuant to section 751(a)(3)(A) of the Act.

Assessment Rates

The Department will determine, and CBP shall assess, antidumping duties on all appropriate entries. The Department will issue, as appropriate, appraisement instructions directly to CBP within 15 days of publication of these final results of administrative review. In accordance with 19 CFR 351.212(b), we calculated an exporter/importer (or customer)-specific assessment rate for the merchandise subject to this review. Where the respondent has reported reliable entered values, we calculated for all U.S. sales to each importer (or customer)-specific *ad valorem* rates by aggregating the dumping margins calculated for all U.S. sales to each importer (or customer) and dividing this amount by the total entered quantity of the sales to each importer (or customer). Where an importer (or customer)-specific *ad valorem* rate is greater than *de minimis*, we will apply the assessment rate to the entered value of the importer's/customer's entries during the review period. Where we do not have entered values for all U.S. sales, we calculated a per–unit assessment rate by aggregating the antidumping duties due for al U.S. sales to each importer (or customer) and dividing this amount by the total quantity sold to that importer (or customer). To determine whether the duty assessment rates are *de minimis*, in accordance with the requirement set forth in 19 CFR 351.106(c)(2), we calculated importer (or customer)-specific *ad valorem* rates based on the estimated entered value. Where an importer (or customer)-specific *ad valorem* rate is zero or *de minimis*, we will instruct CBP to liquidate appropriate entries without regard to antidumping duties.

Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication of the final results of this administrative review for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(2)(C) of the Act: (1) for the above–listed respondents, which have a separate rate, the cash deposit rate will be the company–specific rate established in the final results of review (except, if the rate is zero or de minimis, no cash deposit will be required); (2) for previously investigated or reviewed PRC and non–PRC exporters not listed above that have separate rates, the cash deposit rate will continue to be the exporter–specific rate published for the most recent period; (3) for all PRC exporters of subject merchandise that have not been found to be entitled to a separate rate, the cash deposit rate will be the PRC–wide rate of 70.71 percent; and (4) for all non–PRC exporters of subject merchandise which have not received their own rate, the cash deposit rate will be the rate applicable to the PRC exporters that supplied that non–PRC exporter. These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

Notification to Importers

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This determination is issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: June 30, 2006.

David M. Spooner,

Assistant Secretary for Import Administration.

[FR Doc. E6–10740 Filed 7–7–06; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

A–570–832

Continuation of Antidumping Duty Order: Pure Magnesium from the People's Republic of China

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: As a result of the determinations by the Department of Commerce (''Department'') and the International Trade Commission (''Commission'') that revocation of this antidumping duty order would be likely to lead to continuation or recurrence of dumping and material injury to an industry in the United States, pursuant to section 751(c) of the Tariff Act of 1930, as amended (''the Act''), the Department hereby orders the continuation of the antidumping duty order on pure magnesium from the People's Republic of China (''the PRC''). The Department is publishing notice of the continuation of this antidumping duty order.

EFFECTIVE DATE: July 10, 2006.

FOR FURTHER INFORMATION CONTACT: Hilary E. Sadler, Esq. or Jim Nunno, AD/CVD Operations, Office 8, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Ave., NW, Washington, DC 20230; telephone: (202) 482–4340 or (202) 482–0783, respectively.

SUPPLEMENTARY INFORMATION:

Background

On September 1, 2005, the Department initiated and the Commission instituted a sunset review of the antidumping duty order on pure magnesium from the PRC pursuant to section 751(c) of the Act. *See Initiation of Five–Year (''Sunset'') Reviews*, 70 FR 52074 (September 1, 2005). As a result of its review, the Department found that revocation of the antidumping duty order would be likely to lead to continuation or recurrence of dumping and notified the Commission of the magnitude of the margins likely to prevail were the order to be revoked. *See Pure Magnesium from the People's Republic of China; Notice of Final Results of Expedited Sunset Review of Antidumping Duty Order*, 71 FR 580 (January 5, 2006).

The Commission determined, pursuant to section 751(c) of the Act, that revocation of the antidumping duty order on pure magnesium from the PRC would be likely to lead to continuation

or recurrence of material injury to an industry in the United States within a reasonably foreseeable time. *See Pure and Alloy Magnesium from Canada and Pure Magnesium from China*, 71 FR 36359 (June 26, 2006), USITC Publication 3859 (June 2006) (Investigation Nos. 701–TA–309–A–B and 731–TA–696 (Second Review)).

Scope of the Order

The product covered by this review is pure primary magnesium regardless of chemistry, form or size, unless expressly excluded from the scope of this order. Primary magnesium is a metal or alloy containing by weight primarily the element magnesium and produced by decomposing raw materials into magnesium metal. Pure primary magnesium is used primarily as a chemical in the aluminum alloying, desulfurization, and chemical reduction industries. In addition, pure primary magnesium is used as an input in producing magnesium alloy. Pure primary magnesium encompasses products (including, but not limited to, butt–ends, stubs, crowns and crystals) with the following primary magnesium contents: (1) Products that contain at least 99.95 percent primary magnesium, by weight (generally referred to as ''ultra–pure'' magnesium); (2) Products that contain less than 99.95 percent but not less than 99.8 percent primary magnesium, by weight (generally referred to as ''pure'' magnesium); and (3) Products (generally referred to as ''off–specification pure'' magnesium) that contain 50 percent or greater, but less than 99.8 percent primary magnesium, by weight, and that do not conform to ASTM specifications for alloy magnesium. ''Off–specification pure'' magnesium is pure primary magnesium containing magnesium scrap, secondary magnesium, oxidized magnesium or impurities (whether or not intentionally added) that cause the primary magnesium content to fall below 99.8 percent by weight. It generally does not contain, individually or in combination, 1.5 percent or more, by weight, of the following alloying elements: aluminum, manganese, zinc, silicon, thorium, zirconium and rare earths.

Since the antidumping duty order was issued, we have clarified that the scope of the original order includes, but is not limited to, butt ends, stubs, crowns and crystals. *See* May 22, 1997, instructions to U.S. Customs and November 14, 1997, Final Scope Ruling of Antidumping Duty Order on Pure Magnesium from China.

Excluded from the scope of this order are alloy primary magnesium (that meets specifications for alloy magnesium), primary magnesium anodes, granular primary magnesium (including turnings, chips and powder), having a maximum physical dimension (*i.e.*, length or diameter) of one inch or less, secondary magnesium (which has pure primary magnesium content of less than 50 percent by weight), and remelted magnesium whose pure primary magnesium content is less than 50 percent by weight. Pure magnesium products covered by this order are currently classifiable under the Harmonized Tariff Schedule of the United States (''HTSUS'') subheadings 8104.11.00, 8104.19.00, 8104.20.00, 8104.30.00, 8104.90.00, 3824.90.11, 3824.90.19 and 9817.00.90. Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope is dispositive.

Determination

As a result of the determinations by the Department and the Commission that revocation of this antidumping duty order would be likely to lead to continuation or recurrence of dumping and material injury to an industry in the United States, pursuant to sections 751(d)(2)(A) and (B) of the Act, the Department hereby orders the continuation of the antidumping duty order on pure magnesium from The PRC.

U.S. Customs and Border Protection will continue to collect antidumping duty deposits at the rates in effect at the time of entry for all imports of subject merchandise. The effective date of the continuation of this order is the date of publication in the **Federal Register** of this Notice of Continuation. Pursuant to section 751(c)(2) of the Act, the Department intends to initiate the next five–year review of this antidumping order not later than June 2011.

This sunset review and this continuation notice are in accordance with section 751(c) of the Act and published pursuant to 777(i)(1) of the Act.

Dated: June 30, 2006.

David M. Spooner,

Assistant Secretary for Import Administration.

[FR Doc. E6–10744 Filed 7–7–06; 8:45 am]

Billing Code: 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[C–580–837]

Notice of Final Results of Countervailing Duty Administrative Review: Certain Cut–to-Length Carbon–Quality Steel Plate from the Republic of Korea

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On March 7, 2006, the Department of Commerce (''the Department'') published the preliminary results of the countervailing duty (''CVD'') administrative review of certain cut–to-length carbon–quality steel plate (''CTL Plate'') from the Republic of Korea (''Korea''). The review covers Dongkuk Steel Mill Co., Ltd. (''DSM''). The period of review (''POR'') is January 1, 2004, through December 31, 2004. The Department received no comments concerning our preliminary results; therefore, our final results remain unchanged from our preliminary results. The final results are listed in the section ''*Final Results of Review*'' below.

EFFECTIVE DATE: July 10, 2006.

FOR FURTHER INFORMATION CONTACT: Tipten Troidl, AD/CVD Operations, Office 3, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Ave., NW., Washington, DC 20230; telephone: (202) 482–1767.

SUPPLEMENTARY INFORMATION:

Background

On March 7, 2006, the Department published the preliminary results of the administrative review of the CVD order on CTL Plate from Korea. *See Notice of Preliminary Results of Countervailing Duty Administrative Review: Certain Cut–to-Length Carbon–Quality Steel Plate from the Republic of Korea*, 71 FR 11397 (March 7, 2006) (''*Preliminary Results*''). We invited interested parties to comment on our *Preliminary Results*. We received no comments.

Scope of Review

The products covered by the CVD order are certain hot–rolled carbon–quality steel: (1) Universal mill plates (*i.e.*, flat–rolled products rolled on four faces or in a closed box pass, of a width exceeding 150 mm but not exceeding 1250 mm, and of a nominal or actual thickness of not less than 4 mm, which are cut–to-length (not in coils) and without patterns in relief), of iron or non–alloy-quality steel; and (2) flat–

rolled products, hot–rolled, of a nominal or actual thickness of 4.75 mm or more and of a width which exceeds 150 mm and measures at least twice the thickness, and which are cut–to-length (not in coils). Steel products to be included in the scope of the order are of rectangular, square, circular or other shape and of rectangular or non–rectangular cross–section where such non–rectangular cross–section is achieved subsequent to the rolling process (*i.e.*, products which have been ''worked after rolling'')--for example, products which have been beveled or rounded at the edges. Steel products that meet the noted physical characteristics that are painted, varnished or coated with plastic or other non–metallic substances are included within this scope. Also, specifically included in the scope of the order are high strength, low alloy (''HSLA'') steels. HSLA steels are recognized as steels with micro–alloying levels of elements such as chromium, copper, niobium, titanium, vanadium, and molybdenum. Steel products to be included in this scope, regardless of Harmonized Tariff Schedule of the United States (''HTSUS'') definitions, are products in which: (1) Iron predominates, by weight, over each of the other contained elements; (2) the carbon content is two percent or less, by weight; and (3) none of the elements listed below is equal to or exceeds the quantity, by weight, respectively indicated: 1.80 percent of manganese, or 1.50 percent of silicon, or 1.00 percent of copper, or 0.50 percent of aluminum, or 1.25 percent of chromium, or 0.30 percent of cobalt, or 0.40 percent of lead, or 1.25 percent of nickel, or 0.30 percent of tungsten, or 0.10 percent of molybdenum, or 0.10 percent of niobium, or 0.41 percent of titanium, or 0.15 percent of vanadium, or 0.15 percent zirconium. All products that meet the written physical description, and in which the chemistry quantities do not equal or exceed any one of the levels listed above, are within the scope of this order unless otherwise specifically excluded. The following products are specifically excluded from the order: (1) Products clad, plated, or coated with metal, whether or not painted, varnished or coated with plastic or other non–metallic substances; (2) SAE grades (formerly AISI grades) of series 2300 and above; (3) products made to ASTM A710 and A736 or their proprietary equivalents; (4) abrasion–resistant steels (*i.e.*, USS AR 400, USS AR 500); (5) products made to ASTM A202, A225, A514 grade S, A517 grade S, or their proprietary equivalents; (6) ball bearing steels; (7) tool steels; and (8) silicon manganese steel or silicon electric steel.

The merchandise subject to the order is currently classifiable under the HTSUS under subheadings: 7208.40.3030, 7208.40.3060, 7208.51.0030, 7208.51.0045, 7208.51.0060, 7208.52.0000, 7208.53.0000, 7208.90.0000, 7210.70.3000, 7210.90.9000, 7211.13.0000, 7211.14.0030, 7211.14.0045, 7211.90.0000, 7212.40.1000, 7212.40.5000, 7212.50.0000, 7225.40.3050, 7225.40.7000, 7225.50.6000, 7225.99.0090, 7226.91.5000, 7226.91.7000, 7226.91.8000, 7226.99.0000.

Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise covered by the order is dispositive.

Final Results of Review

As noted above, the Department received no comments concerning the preliminary results; consistent with the preliminary results, we determine that the total net countervailing subsidy rate for DSM is 0.05 percent *ad valorem*, a *de minimis* rate, for the period January 1, 2004, through December 31, 2004. As there have been no changes or comments from the preliminary results we are not attaching a Decision Memorandum to this **Federal Register** notice. For further details of the programs included in this proceeding, see the *Preliminary Results*.

Manufacturer/exporter	Margin (percent)
Dongkuk Steel Mill Co., Ltd. (DSM)	0.05 (de minimis)

Assessment

The Department will issue appropriate assessment instructions directly to U.S. Customs and Border Protection (''CBP'') within 15 days of publication of these final results of review. We intend to issue liquidation instructions to CBP for entries or exports made during the period January 1, 2004, through December 31, 2004, without regard to duties.

Cash Deposits Requirements

We will instruct CBP to collect cash deposit of 0.00 percent for DSM and to continue to collect cash deposits for non–reviewed companies at the most recent company–specific rate applicable to the company. Accordingly, the cash deposit rate that will be applied to non–reviewed companies covered by this order will be the rate for that company established in the investigation or the most recently completed administrative review. *See Notice of Amended Final Determination: Certain Cut–to-Length Carbon–Quality Steel Plate from India and the Republic of Korea; and Notice of Countervailing Duty Orders: Certain Cut–to-Length Carbon–Quality Steel Plate from France, India, Indonesia, Italy, and the Republic of Korea*, 65 FR 6587 (February 10, 2000). The ''All Others'' rate of 3.26 percent shall apply to all companies not previously reviewed until a review of a company assigned this rate is requested.

This notice also is the only reminder to parties subject to administrative protective order (''APO'') of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305. Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation. We are issuing and publishing these results and notice in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: June 30, 2006.

David M. Spooner,

Assistant Secretary for Import Administration.

[FR Doc. E6–10731 Filed 7–7–06; 8:45 am]

Billing Code: 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

Exporters' Textile Advisory Committee; Notice of Open Meeting

A meeting of the Exporters' Textile Advisory Committee will be held on August 30, 2006 from 8 a.m.-10 a.m. at the MAGIC trade show in Las Vegas, Nevada, room # TBA. When the room number is assigned, it will be published in a future **Federal Register** notice.

The Exporters' Textile Advisory Committee is a national advisory committee that advises Department of Commerce officials on the identification of export barriers, and on market expansion activities. With the elimination of textile quotas under the WTO agreement on textiles and clothing, the Administration is committed to encouraging U.S. textile and apparel firms to export and remain competitive in the global market.

The meeting will be open to the public with a limited number of seats available. For further information or

copies of the minutes, contact Rachel Alarid at (202) 482-5154.

Dated: July 3, 2006.

Philip J. Martello,

Acting Deputy Assistant Secretary for Textiles and Apparel.

[FR Doc. E6–10746 Filed 7–7–06; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 111505A]

Pacific Fishery Management Council; Notice of Intent; Extension of Public Scoping Period for Intersector Groundfish Allocations

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Extension of public scoping period for an environmental impact statement (EIS); request for comments.

SUMMARY: NMFS and the Pacific Fishery Management Council (Pacific Council) announce their intent to extend the public scoping period for an EIS in accordance with the National Environmental Policy Act of 1969 to analyze proposals to allocate groundfish among various sectors of the non-tribal Pacific Coast groundfish fishery.

DATES: Public scoping meetings will be announced in the **Federal Register** at a later date. Written comments will be accepted at the Pacific Council office through October 27, 2006. The public comment period will be reopened as part of the public comment section under the intersector allocation agenda item at the Pacific Council meeting in Del Mar, CA, the week of November 12, 2006. Additional information on the time and location for this meeting will be provided when the meeting is announced in the **Federal Register**.

ADDRESSES: You may submit comments, on issues and alternatives, identified by 111505A by any of the following methods:

- E-mail: ##*GFAllocationEIS.nwr@noaa.gov*. Include [111505A] and enter ''Scoping Comments'' in the subject line of the message.
- Fax: 503–820–2299.
- Mail: Donald McIsaac, Pacific Fishery Management Council, 7700 NE Ambassador Pl., Suite 200, Portland, OR 97220.

FOR FURTHER INFORMATION CONTACT: John DeVore, Pacific Fishery Management Council, phone: 503–820–2280, fax: 503–820–2299 and email: *john.devore@noaa.gov*; or Yvonne de Reynier NMFS, Northwest Region, phone: 206–526–6129, fax: 206–526–6426 and email: *yvonne.dereynier@noaa.gov*.

SUPPLEMENTARY INFORMATION:

Electronic Access

This **Federal Register** document is available on the Government Printing Office's Web site at: *http://www.gpoaccess.gov/fr/index/html*.

Description of the Proposal

The proposed action with a description of the proposal was published in the **Federal Register** on November 21, 2005 (70 FR 70054).

Preliminary Identification of Environmental Issues

A principal objective of this scoping and public input process is to identify potentially significant impacts to the human environment that should be analyzed in depth in the intersector allocation EIS. Concomitant with identification of those impacts to be analyzed in depth is identification and elimination from detailed study of issues that are not significant or which have been covered in prior environmental reviews. This narrowing is intended to allow greater focus on those impacts that are potentially most significant. Impacts on the following components of the biological and physical environment will be evaluated: (1) Essential fish habitat and ecosystems; (2) protected species listed under the Endangered Species Act and Marine Mammal Protection Act and their habitat; and (3) the fishery management unit, including target and non-target fish stocks. Socioeconomic impacts are also considered in terms of the effect changes will have on the following groups: (1) Those who participate in harvesting the fishery resources and other living marine resources (for commercial, subsistence, or recreational purposes); (2) those who process and market fish and fish products; (3) those who are involved in allied support industries; (4) those who rely on living marine resources in the management area; (5) those who consume fish products; (6) those who benefit from non-consumptive use (e.g., wildlife viewing); (7) those who do not use the resource, but derive benefit from it by virtue of its existence, the option to use it, or the bequest of the resource to future generations; (8) those involved in managing and monitoring fisheries; and (9) fishing communities. Analysis of the effects of the alternatives on these groups will be presented in a manner that allows the identification of any disproportionate impacts on low income and minority segments of the identified groups, impacts on small entities, and cumulative impacts. Additional comment is sought on other types of impacts that should be considered or specific impacts to which particular attention should be paid within these categories.

Scoping and Public Involvement

Scoping is an early and open process for identifying the scope of notable issues related to proposed alternatives (including status quo and other alternatives identified during the scoping process). A principal objective of the scoping and public input process is to identify a reasonable set of alternatives that, with adequate analysis, sharply define critical issues and provide a clear basis for distinguishing among those alternatives and selecting a preferred alternative. The public scoping process provides the public with the opportunity to comment on the range of alternatives. The scope of the alternatives to be analyzed should be broad enough for the Pacific Council and NMFS to make informed decisions on whether an alternative should be developed and, if so, how it should be designed, and to assess other changes to the fishery management plan and regulations necessary for the implementation of the alternative.

Written comments will be accepted at the Pacific Council office through October 27, 2006 (see **ADDRESSES**). The public comment period will be reopened as part of the public comment section under the intersector allocation environmental impact statement agenda item considered at the Council meeting in Del Mar, California, the week of November 12, 2006. Additional information on the time and location for this meeting will be provided when the meeting is announced in the **Federal Register**. This information will also be posted on the Council Web site (*http://www.pcouncil.org*) (see **ADDRESSES**).

Authority: 16 U.S.C. 1801 *et seq.*

Dated: July 3, 2006.

Alan D. Risenhoover,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. E6–10734 Filed 7–7–06; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 070506F]

New England Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice; public meeting.

SUMMARY: The New England Fishery Management Council (Council) is scheduling a public meeting of its Research Steering Committee in July, 2006 to consider actions affecting New England fisheries in the exclusive economic zone (EEZ). Recommendations from this group will be brought to the full Council for formal consideration and action, if appropriate.

DATES: This meeting will be held on Thursday, July 27, 2006 at 9:30 a.m.

ADDRESSES: This meeting will be held at the Sheraton Colonial, One Audubon Road, Wakefield, MA 01880: telephone: (781) 245–9300; fax: (781) 245–0842.

Council address: New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950.

FOR FURTHER INFORMATION CONTACT: Paul J. Howard, Executive Director, New England Fishery Management Council; telephone: (978) 465–0492.

SUPPLEMENTARY INFORMATION: The Research Steering Committee will conduct a management review of the Gulf of Maine Research Institute's ongoing efforts to conduct and coordinate a Northeast Regional Cod Tagging Program. Team member final reports will be discussed along with several other cod-related final reports made available through the Northeast Consortium. Additional reports may be added to the agenda. The results of the Research Steering Committee discussions will be forwarded to the full Council for consideration at its September meeting.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Paul J. Howard, Executive Director, at (978) 465–0492, at least 5 days prior to the meeting date.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: July 5, 2006.

Tracey L. Thompson,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. E6–10733 Filed 7–7–06; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 070506E]

Pacific Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting.

SUMMARY: The Pacific Fishery Management Council's (Council) Ad Hoc Salmon Amendment Committee (SAC) will hold a meeting to review a preliminary draft Environmental Assessment for an amendment to the Pacific Coast Salmon Fishery Management Plan (FMP) addressing the issue of de minimis ocean fisheries during periods of depressed Klamath River fall Chinook stock status. The SAC will discuss preliminary analyses of the alternatives and initiate discussions to recommend a preferred alternative for the Council's September 11–15, 2006 meeting in Foster City, CA. The SAC meeting is open to the public.

DATES: The meeting will be held Thursday, August 9, 2006, from 8 a.m. to 5 p.m.

ADDRESSES: The meeting will be held at the Council office, 7700 NE Ambassador Place, Suite 101, Portland, OR 97220–1384.

FOR FURTHER INFORMATION CONTACT: Mr. Chuck Tracy, Salmon Management Staff Officer, Pacific Fishery Management Council; (503) 820–2280.

SUPPLEMENTARY INFORMATION: The purpose of the meeting is to review a preliminary draft Environmental Assessment for an amendment to the Salmon FMP addressing the issue of de minimis ocean fisheries during periods of depressed Klamath River fall Chinook stock status. This issue required a emergency implementation of the 2006 ocean salmon season. The development of an amendment is intended to avoid the need for an emergency rule in the future. The alternatives reviewed at this meeting will be the basis for developing a preferred alternative, which the Council is scheduled to adopt for public review and further analysis at its September 11–15, 2006 meeting in Foster City, CA.

Although non-emergency issues not contained in the meeting agenda may come before the SAC for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under Section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the intent to take final action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Ms. Carolyn Porter at (503) 820–2280 at least 5 days prior to the meeting date.

Dated: July 5, 2006.

Tracey L. Thompson,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. E6–10732 Filed 7–7–06; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

Patent and Trademark Office

Submission for OMB Review; Comment Request

The United States Patent and Trademark Office (USPTO) has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: United States Patent and Trademark Office (USPTO).

Title: Customer Panel Quality Survey.

Form Number(s): None.

Agency Approval Number: 0651–00xx.

Type of Request: New collection.

Burden: 539 hours annually.

Number of Respondents: 3,168 responses per year.

Avg. Hours Per Response: The USPTO estimates that it will take the public

approximately 10 minutes (0.17 hours) to complete either the paper or the online survey. This includes the time to gather the necessary information, respond to the survey, and submit it to the USPTO.

Needs and Uses: Individuals who work at firms that file more than six patent applications a year use the Customer Panel Quality Survey to provide the USPTO with their perceptions of examination quality. The USPTO uses the feedback gathered from the survey to assist them in targeting key areas for examination quality improvement and to identify important areas for examiner training.

Affected Public: Individuals or households, businesses or other for-profits, and not-for-profit institutions.

Frequency: Quarterly.

Respondent's Obligation: Voluntary.

OMB Desk Officer: David Rostker, (202) 395–3897.

Copies of the above information collection proposal can be obtained by any of the following methods:

E-mail: Susan.Brown@uspto.gov. Include ''0651–00xx Customer Panel Quality Survey copy request'' in the subject line of the message.

Fax: 571–273–0112, marked to the attention of Susan Brown.

Mail: Susan K. Brown, Records Officer, Office of the Chief Information Officer, Architecture, Engineering and Technical Services, Data Architecture and Services Division, U.S. Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313–1450.

Written comments and recommendations for the proposed information collection should be sent on or before August 9, 2006 to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, 725 17th Street, NW., Washington, DC 20503.

Dated: June 30, 2006.

Susan K. Brown,

Records Officer, USPTO, Office of the Chief Information Officer, Architecture, Engineering and Technical Services, Data Architecture and Services Division.

[FR Doc. E6–10707 Filed 7–7–06; 8:45 am]

BILLING CODE 3510–16–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[DoD–2006–OS–0073]

Base Closure and Realignment

AGENCY: Department of Defense, Office of Economic Adjustment.

ACTION: Notice.

SUMMARY: This Notice is provided pursuant to section 2905(b)(7)(B)(ii) of the Defense Base Closure and Realignment Act of 1990. It provides a partial list of military installations closing or realigning pursuant to the 2005 Defense Base Closure and Realignment (BRAC) Report. It also provides a corresponding listing of the Local Redevelopment Authorities (LRAs) recognized by the Secretary of Defense, acting through the Department of Defense Office of Economic Adjustment (OEA), as well as the points of contact, addresses, and telephone numbers for the LRAs for those installations. Representatives of state and local governments, homeless providers, and other parties interested in the redevelopment of an installation should contact the person or organization listed. The following information will also be published simultaneously in a newspaper of general circulation in the area of each installation. There will be additional Notices providing this same information about LRAs for other closing or realigning installations where surplus government property is available as those LRAs are recognized by the OEA.

DATES: *Effective Date:* July 10, 2006.

FOR FURTHER INFORMATION CONTACT: Director, Office of Economic Adjustment, Office of the Secretary of Defense, 400 Army Navy Drive, Suite 200, Arlington, VA 22202–4704, (703) 604–6020.

Local Redevelopment Authorities (LRAs) for Closing and Realigning Military Installations

Alabama

Installation Name: AMSA 51.
LRA Name: City of Tuscaloosa.
Point of Contact: Evelyn K. Young, AICP, Associate Director, Community Planning & Development Department, City of Tuscaloosa.
Address: P.O. Box 2089, Tuscaloosa, AL 35403.
Phone: (205) 349–0160.

Installation Name: Finnell AFRC.
LRA Name: City of Tuscaloosa.
Point of Contact: Evelyn K. Young, AICP, Associate Director, Community Planning & Development Department, City of Tuscaloosa.
Address: P.O. Box 2089, Tuscaloosa, AL 35403.
Phone: (205) 349–0160.

Installation Name: Cleveland Leight Abbott USARC.
LRA Name: Tuskegee Local Redevelopment Authority.
Point of Contact: Alfred J. Davis, City Manager, City of Tuskegee.
Address: 101 Fonville Street, Tuskegee, AL 36083.
Phone: (334) 727–833.

Michigan

Installation Name: George Dolliver USARC/AMSA 135.
LRA Name: Battle Creek Local Redevelopment Authority.
Point of Contact: Michael J. Buckley, Planning and Community Development Director, City of Battle Creek.
Address: P.O. Box 1717, Battle Creek, MI 49016–1717.
Phone: (269) 966–3320.

Missouri

Installation Name: Marine Corps Support Activity Kansas City.
LRA Name: City of Kansas City.
Point of Contact: Edgar Jordan, Division Head, Property & Relocation Services, City Planning & Development Department, City of Kansas City.
Address: 16th Floor, City Hall, Kansas City, MO 64106.
Phone: (816) 513–2894.

Oregon

Installation Name: 2LT Alfred Sharff USARC.
LRA Name: Portland Development Commission.
Point of Contact: Ryan Moore, Project Coordinator/Housing Department, Portland Development Commission.
Address: 222 NW., Fifth Avenue, Portland, OR 97209–3859.
Phone: (503) 823–3278.

Installation Name: SGT Jerome Sears USARC.
LRA Name: Portland Development Commission.
Point of Contact: Ryan Moore, Project Coordinator/Housing Department, Portland Development Commission.
Address: 222 NW. Fifth Avenue, Portland, OR 97209–3859.
Phone: (503) 823–3278.

Pennsylvania

Installation Name: Wilkes-Varre USARC.
LRA Name: Township of Plains.
Point of Contact: Rose Corcoran, Commissioner, Plains Township Board of Commissioners.
Address: Plains Township Municipal Building, 126 Main Street, Plains, PA 18705.
Phone: (570) 829–3439.

Washington

Installation Name: 2LT Robert R. Leisy USARC/AMSA 79.
LRA Name: City of Seattle.
Point of Contact: Linda Cannon.
Address: Office of Intergovernmental Relations, City of Seattle, 600 4th Avenue, FL 5, P.O. Box 94746, Seattle, WA 98124–4746.
Phone: (206) 684–8263.

Installation Name: CPT James R. Harvey USARC.
LRA Name: City of Seattle.
Point of Contact: Linda Cannon.
Address: Office of Intergovernmental Relations, City of Seattle, 600 4th Avenue, FL 5, P.O. Box 94746, Seattle, WA 98124–4746.
Phone: (206) 684–8263.

Installation Name: Fort Lawton USAR Complex.

LRA Name: City of Seattle.
Point of Contact: Linda Cannon.
Address: Office of Intergovernmental Relations, City of Seattle, 600 4th Avenue, FL 5, P.O. Box 94746, Seattle, WA 98124–4746.
Phone: (206) 684–8263.

West Virginia

Installation Name: SSG Kuhl USARC/AMSA 114.
LRA Name: City of Ripley.
Point of Contact: Ollie M. Harvey, Mayor, City of Ripley.
Address: 203 South Church Street, Ripley, WV 25271.
Phone: (304) 372–3482.

Dated: June 30, 2006.

L.M. Bynum,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 06–6078 Filed 7–7–06; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0132]

Federal Acquisition Regulation; Information Collection; Contractors' Purchasing Systems Reviews

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for public comments regarding an extension to an existing OMB clearance (9000–0132).

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat will be submitting to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning contractors' purchasing systems reviews (CPSRs). This OMB clearance expires on October 31, 2006.

Public comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the FAR, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

DATES: Comments may be submitted on or before September 8, 2006.

ADDRESSES: Submit comments, including suggestions for reducing this burden to the General Services Administration, FAR Secretariat (VIR), 1800 F Street, NW, Room 4035, Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT Ms. Rhonda Cundiff, Contract Policy Division, GSA, (202) 501–3755.

SUPPLEMENTARY INFORMATION:

A. Purpose

The objective of a CPSR, as discussed in Part 44 of the FAR, is to evaluate the efficiency and effectiveness with which the contractor spends Government funds and complies with Government policy when subcontracting. The review provides the administrative contracting officer a basis for granting, withholding, or withdrawing approval of the contractor's purchasing system.

B. Annual Reporting Burden

Number of Respondents: 1,580.
Responses Per Respondent: 1.
Total Responses: 1,580.
Average Burden Per Response: 17.
Total Burden Hours: 26,860.
Obtaining Copies of Proposals: Requesters may obtain a copy of the information collection documents from the General Services Administration, FAR Secretariat (VIR), Room 4035, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 9000–0132, Contractors' Purchasing Systems Reviews, in all correspondence.

Dated: July 3, 2006.

Linda Nelson,

Deputy Director, Contract Policy Division.

[FR Doc. 06–6061 Filed 7–7–06; 8:45 am]

BILLING CODE 6820–EP–S

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0133]

Federal Acquisition Regulation; Information Collection; Defense Production Act Amendments

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for comments regarding an extension to an existing OMB clearance (9000–0133).

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat will be submitting to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning Defense Production Act Amendments. The clearance currently expires on October 31, 2006.

Public comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the FAR, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

DATES: Comments may be submitted on or before September 8, 2006.

ADDRESSES: Submit comments regarding this burden estimate or any other aspect of the collection of information, including suggestions for reducing this burden to the General Services Administration, Regulatory Secretariat (VIR), 1800 F Street, NW, Room 4035, Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Ms. Jeritta Parnell, Contract Policy Division, GSA, (202) 501–4082.

SUPPLEMENTARY INFORMATION:

A. Purpose

Title III of the Defense Production Act (DPA) of 1950 authorizes various forms of Government assistance to encourage expansion of production capacity and supply of industrial resources essential to national defense. The DPA Amendments of 1992 provide for the testing, qualification, and use of industrial resources manufactured or developed with assistance provided under Title III of the DPA.

FAR 34.1 and 52.234–1 require contractors, upon the direction of the contracting officer, to test Title III industrial resources for qualification, and provide the test results to the Defense Production Act Office. The FAR

coverage also expresses Government policy to pay for such testing and provides definitions, procedures, and a contract clause to implement the policy. This information is used by the Defense Production Act Office, Title III Program, to determine whether the Title III industrial resource has been provided an impartial opportunity to qualify.

B. Annual Reporting Burden

Respondents: 6.
Responses Per Respondent: 3.
Total Annual Responses: 18.
Hours Per Response: 100.
Total Burden Hours: 1,800.
Obtaining Copies of Proposals: Requesters may obtain a copy of the information collection documents from the General Services Administration, Regulatory Secretariat (VIR), Room 4035, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control Number 9000–0133, Defense Production Act Amendments, in all correspondence.

Dated: June 26, 2006.

Ralph De Stefano,

Director, Contract Policy Division.

[FR Doc. 06–6062 Filed 7–7–06; 8:45 am]

BILLING CODE 6820–EP–S

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0136]

Federal Acquisition Regulation; Information Collection; Commercial Item Acquisitions

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for comments regarding an extension to an existing OMB clearance (9000–0136).

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat will be submitting to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning the clauses and provisions required for use in commercial item acquisitions. The OMB clearance expires on October 31, 2006.

Public comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the FAR, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

DATES: Submit comments on or before September 8, 2006.

FOR FURTHER INFORMATION CONTACT Michael Jackson, Contract Policy Division, GSA (202) 208–4949.

ADDRESSES: Submit comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to the General Services Administration, Regulatory Secretariat (VIR), 1800 F Street, NW, Room 4035, Washington, DC 20405.

SUPPLEMENTARY INFORMATION:

A. Purpose

The Federal Acquisition Streamlining Act of 1994 included Title VIII, entitled Commercial Items. The title made numerous additions and revisions to both the civilian agency and Armed Service acquisition statutes to encourage and facilitate the acquisition of commercial items and services by Federal Government agencies.

To implement these changes, DoD, NASA, and GSA amended the Federal Acquisition Regulation (FAR) to include several streamlined and simplified clauses and provisions to be used in place of existing clauses and provisions. They were designed to simplify solicitations and contracts for commercial items.

Information is used by Federal agencies to facilitate the acquisition of commercial items and services.

B. Annual Reporting Burden

Respondents: 37,500.
Responses Per Respondent: 34.
Total Responses: 1,275,000.
Hours Per Response: .312.
Total Burden Hours: 397,800.
Obtaining Copies of Proposals: Requesters may obtain a copy of the information collection documents from the General Services Administration, FAR Secretariat (VIR), Room 4035, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 9000–0136, Commercial Item Acquisitions, in all correspondence.

Dated: June 26, 2006.

Ralph De Stefano,

Director, Contract Policy Division.

[FR Doc. 06–6063 Filed 7–7–06; 8:45 am]

BILLING CODE 6820–EP–S

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0011]

Federal Acquisition Regulation; Information Collection; Preaward Survey Forms (Standard Forms 1403, 1404, 1405, 1406, 1407, and 1408)

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for comments regarding an extension to an existing OMB clearance (9000–0011).

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat will be submitting to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning preaward survey forms (Standard Forms 1403, 1404, 1405, 1406, 1407, and 1408.) The clearance currently expires on October 31, 2006.

Public comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the FAR, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

DATES: Submit comments on or before September 8, 2006.

ADDRESSES: Submit comments regarding this burden estimate or any other aspect of the collection of information, including suggestions for reducing this burden to the General Services

Administration, Regulatory Secretariat (VIR), 1800 F Street, NW, Room 4035, Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Ms. Linda Nelson, Contract Policy Division, GSA, (202) 501–1900.

SUPPLEMENTARY INFORMATION:

A. Purpose

To protect the Government's interest and to ensure timely delivery of items of the requisite quality, contracting officers, prior to award, must make an affirmative determination that the prospective contractor is responsible, *i.e.*, capable of performing the contract. Before making such a determination, the contracting officer must have in his possession or must obtain information sufficient to satisfy himself that the prospective contractor (i) has adequate financial resources, or the ability to obtain such resources, (ii) is able to comply with required delivery schedule, (iii) has a satisfactory record of performance, (iv) has a satisfactory record of integrity, and (v) is otherwise qualified and eligible to receive an award under appropriate laws and regulations. If such information is not in the contracting officer's possession, it is obtained through a preaward survey conducted by the contract administration office responsible for the plant and/or the geographic area in which the plant is located. The necessary data is collected by contract administration personnel from available data or through plant visits, phone calls, and correspondence and entered on Standard Forms 1403, 1404, 1405, 1406, 1407, and 1408 in detail commensurate with the dollar value and complexity of the procurement.

B. Annual Reporting Burden

Respondents: *5,478*.
Responses Per Respondent: *1*.
Total Responses: *5,478*.
Hours Per Response: *20.8*.
Total Burden Hours: *113,942*.

OBTAINING COPIES OF PROPOSALS: Requesters may obtain a copy of the information collection documents from the General Services Administration, Regulatory Secretariat (VIR), Room 4035, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control Number 9000–0011, Preaward Survey Forms (Standard Forms 1403, 1404, 1405, 1406, 1407, and 1408), in all correspondence.

Dated: July 3, 2006.

Linda Nelson, Deputy Director,

Contract Policy Division.

[FR Doc. 06–6080 Filed 7–7–06; 8:45 am]

BILLING CODE 6820–EP–S

DEPARTMENT OF ENERGY

Office of Science; Basic Energy Sciences Advisory Committee

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Basic Energy Sciences Advisory Committee (BESAC). Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register**.

DATES: Thursday, August 3, 2006, 8:30 a.m. to 5 p.m.; Friday, August 4, 2006, 8:30 a.m. to 12 p.m.

ADDRESSES: Bethesda North Marriott Hotel and Conference Center, 5701 Marinelli Road, North Bethesda, MD 20852.

FOR FURTHER INFORMATION CONTACT: Karen Talamini; Office of Basic Energy Sciences; U.S. Department of Energy; Germantown Building, Independence Avenue, Washington, DC 20585; Telephone: (301) 903–4563

SUPPLEMENTARY INFORMATION: *Purpose of the Meeting:* The purpose of this meeting is to provide advice and guidance with respect to the basic energy sciences research program.

Tentative Agenda: Agenda will include discussions of the following:

- News from the Office of Science.
- News from the Office of Basic Energy Sciences.
- Report of COV of Materials Sciences and Engineering Division.
- Report of BES Basic Research Needs Workshops.
- Update of DOE Lab Working Group.
- Planned BES ''Basic Research Needs'' Workshops and Grand Challenges Workshop.

Public Participation: The meeting is open to the public. If you would like to file a written statement with the Committee, you may do so either before or after the meeting. If you would like to make oral statements regarding any of the items on the agenda, you should contact Karen Talamini at 301–903–6594 (fax) or *karen.talamini@science.doe.gov* (e-mail). You must make your request for an oral statement at least 5 business days prior to the meeting. Reasonable provision will be made to include the scheduled oral statements on the agenda. The Chairperson of the Committee will conduct the meeting to facilitate the orderly conduct of business. Public comment will follow the 10-minute rule.

Minutes: The minutes of this meeting will be available for public review and copying within 30 days at the Freedom of Information Public Reading Room; 1E–190, Forrestal Building; 1000 Independence Avenue, SW.; Washington, DC 20585; between 9 a.m. and 4 p.m., Monday through Friday, except holidays.

Issued in Washington, DC on July 3, 2006.

Carol Matthews,

Acting Advisory Committee Management Officer.

[FR Doc. E6–10725 Filed 7–7–06; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[IC06–714–001, FERC 714]

Commission Information Collection Activities, Proposed Collection; Comment Request; Extension

June 30, 2006.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice.

SUMMARY: In compliance with the requirements of section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 3507, the Federal Energy Regulatory Commission (Commission) has submitted the information collection described below to the Office of Management and Budget (OMB) for review and extension of this information collection requirement. Any interested person may file comments directly with OMB and should address a copy of those comments to the Commission as explained below. The Commission received no comments in response to an earlier **Federal Register** notice of March 30, 2006 (71 FR 16133–16134) and has made this notation in its submission to OMB.

DATES: Comments on the collection of information are due by August 10, 2006.

ADDRESSES: Address comments on the collection of information to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Federal Energy Regulatory Commission Desk Officer. Comments to OMB should be filed electronically, c/o *oira_submission@omb.eop.gov* and include the OMB Control No. as a point of reference. The Desk Officer may be reached by telephone at 202–395–4650. A copy of the comments should also be sent to the Federal Energy Regulatory Commission, Office of the Executive Director, ED–34, Attention: Michael Miller, 888 First Street, NE., Washington, DC 20426. Comments may

be filed either in paper format or electronically. Those persons filing electronically do not need to make a paper filing. For paper filings, and original and 14 copies of such comments should be submitted to the Secretary of the Commission, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426 and should refer to Docket No. IC06–714–001.

Documents filed electronically via the Internet must be prepared in WordPerfect, MS Word, Portable Document Format, or ASCII format. To file the document, access the Commission's Web site at *http://www.ferc.gov* and click on ''Make an E-Filing,'' and then follow the instructions for each screen. First time users will have to establish a user name and password. The Commission will send an automatic acknowledgement to the sender's e-mail address upon receipt of comments. User assistance for electronic filings is available at 202–502–8258 or by e-mail to *efiling@ferc.gov*. Comments should not be submitted to this e-mail address.

All comments may be viewed, printed or downloaded remotely via the Internet through FERC's homepage using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For user assistance, contact *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676. or for TTY, contact (202) 502–8659.

FOR FURTHER INFORMATION CONTACT: Michael Miller may be reached by telephone at (202) 502–8415, by fax at (202) 273–0873, and by e-mail at *michael.miller@ferc.gov*.

SUPPLEMENTARY INFORMATION:

Description

The information collection submitted for OMB review contains the following:

1. *Collection of Information:* FERC Form 714 ''Annual Electric Control and Planning Area Report.''

2. *Sponsor:* Federal Energy Regulatory Commission.

3. *Control No.:* 1902–0140.

The Commission is now requesting that OMB approve and extend the expiration date for an additional three years with no changes to the existing collection. The information filed with the Commission is mandatory.

4. *Necessity of the Collection of Information:* Submission of the information is necessary for the Commission to carry out its responsibilities in implementing the Statutory provisions consists of sections 202, 207, 210, 211–213 of the Federal Power Act (FPA), as amended (49 Stat. 838; 16 U.S.C. 791a–825r) and particularly sections 304–309 and 311, as well as Energy Policy Act of 2005 (Pub. L. 109–58) (119 Stat. 594) sections 1211, 1221, 1231, 1241 and 1242. The Commission implements the Form 714 filing requirements in the Code of Federal Regulations (CFR) under 18 CFR 141.51.

Through FERC Form 714, the Commission gathers electric transmission system operating and planning information, from control area operations and from utilities charged with resource planning and demand forecasting for planning areas that have an annual peak demand greater than 200 megawatts. This information is used in evaluating transmission system reliability and performance, wholesale rate investigations, and wholesale market under emerging competitive forces.

5. *Respondent Description:* The respondent universe currently comprises 215 companies (on average) subject to the Commission's jurisdiction.

6. *Estimated Burden:* 10,750 total hours, 215 respondents (average), 1 response per respondent, and 50 hours per response (average)

7. *Estimated Cost Burden to respondents:* 10,750 hours/2080 hours per years × $117,321 per year = $606,347. The cost per respondent is equal to $2,820.

Statutory Authority: Statutory provisions of sections 202, 207, 210, 211–213 of the Federal Power Act (FPA), as amend (49 Stat. 838; 16 U.S.C. 791a–825r) and particularly sections 304–309 and 311, as well as Energy Policy Act of 2005 (Pub. L. 109–58) (119 Stat. 594) sections 1211, 1221, 1231, 1241 and 1242. The Commission implements the Form 714 filing requirements in the Code of Federal Regulations (CFR) under 18 CFR 141.51.

Magalie R. Salas,

Secretary.

[FR Doc. E6–10695 Filed 7–7–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP06–403–000]

ANR Pipeline Company; Notice of Annual Report Filing

June 30, 2006.

Take notice that on June 27, 2006, ANR Pipeline Company (ANR) tendered for filing its first report of its operational purchases and sales for the twelve-month period beginning January 1, 2005 and ending on December 31, 2005. ANR states that it is filing this report in compliance with section 38.3 of the general terms and conditions of ANR's FERC Gas Tariff, Second Revised Volume No. 1.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the date as indicated below. Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible online at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time July 7, 2006.

Magalie R. Salas,

Secretary.

[FR Doc. E6–10686 Filed 7–7–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER06–24–001, EL06–79–000]

California Independent System Operator Corporation; Notice of Institution of Proceeding and Refund Effective Date

June 30, 2006.

On June 29, 2006, the Commission issued an order that instituted a proceeding in Docket No. EL06–79–000, pursuant to section 206 of the Federal Power Act (FPA), 16 U.S.C. 824e (2005), concerning the terms and conditions of the California Independent System Operator Corporation's Responsible Participating Transmission Owner Agreement (RPTOA), as amended. *California Independent System Operator Corporation*, 115 FERC ¶ 61,385 (2006).

The refund effective date in Docket No. EL06–79–000, established pursuant to section 206(b) of the FPA, will be the date of publication of this notice in the **Federal Register**.

Magalie R. Salas,

Secretary.

[FR Doc. E6–10692 Filed 7–7–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER06–1007–000]

IEP Power Marketing, LLC; Notice of Issuance of Order

June 30, 2006.

IEP Power Marketing, LLC (IEP) filed an application for market-based rate authority, with an accompanying tariff. The proposed market-based rate tariff provides for the sale of energy and capacity at market-based rates. IEP also requested waivers of various Commission regulations. In particular, IEP requested that the Commission grant blanket approval under 18 CFR part 34 of all future issuances of securities and assumptions of liability by IEP.

On June 27, 2006, pursuant to delegated authority, the Director, Division of Tariffs and Market Development—West, granted the requests for blanket approval under part 34. The Director's order also stated that the Commission would publish a separate notice in the **Federal Register** establishing a period of time for the filing of protests. Accordingly, any person desiring to be heard or to protest the blanket approvals of issuances of securities or assumptions of liability by IEP should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. 18 CFR 385.211, 385.214 (2004).

Notice is hereby given that the deadline for filing motions to intervene or protest is July 27, 2006.

Absent a request to be heard in opposition by the deadline above, IEP is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of IEP, compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approvals of IEP's issuances of securities or assumptions of liability.

Copies of the full text of the Director's Order are available from the Commission's Public Reference Room, 888 First Street, NE., Washington, DC 20426. The Order may also be viewed on the Commission's Web site at *http://www.ferc.gov*, using the eLibrary link. Enter the docket number excluding the last three digits in the docket number filed to access the document. Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages electronic filings.

Magalie R. Salas,

Secretary.

[FR Doc. E6–10690 Filed 7–7–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP06–399–000]

Kern River Gas Transmission Company; Notice of Petition for Waiver of Tariff Provisions and Request for Expedited Action

June 30, 2006.

Take notice that on June 21, 2006, Kern River Gas Transmission Company (Kern River) filed a petition for limited waiver of tariff provisions and requested expedited action by July 10, 2006.

Kern River states that the purpose of this filing is to grant a limited waiver of section 27.2(c) of its tariff to extend the matching period for a specific short-term pre-arranged transportation transaction from two to twenty-four hours. Kern River states that the pre-arranged shipper is a regulated entity, and any matching bids submitted must first be approved by the associated public utilities commission and other state regulatory agencies. Kern River concludes that it is highly unlikely that agency approvals could be coordinated, and a matching bid could be submitted, within the two-hour window specified in Kern River's tariff.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the date indicated below. Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for

review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on July 6, 2006.

Magalie R. Salas,

Secretary.

[FR Doc. E6–10700 Filed 7–7–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER06–1071–000]

Kuehne Chemical Company, Inc.; Notice of Issuance of Order

June 30, 2006.

Kuehne Chemical Company, Inc. (Kuehne) filed an application for market-based rate authority, with an accompanying tariff. The proposed market-based rate tariff provides for the sale of energy and capacity at market-based rates. Kuehne also requested waivers of various Commission regulations. In particular, Kuehne requested that the Commission grant blanket approval under 18 CFR part 34 of all future issuances of securities and assumptions of liability by Kuehne.

On June 27, 2006, pursuant to delegated authority, the Director, Division of Tariffs and Market Development—West, granted the requests for blanket approval under part 34. The Director's order also stated that the Commission would publish a separate notice in the **Federal Register** establishing a period of time for the filing of protests. Accordingly, any person desiring to be heard or to protest the blanket approvals of issuances of securities or assumptions of liability by Kuehne should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. 18 CFR 385.211, 385.214 (2004).

Notice is hereby given that the deadline for filing motions to intervene or protest is July 27, 2006.

Absent a request to be heard in opposition by the deadline above, Kuehne is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of Kuehne, compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approvals of Kuehne's issuances of securities or assumptions of liability.

Copies of the full text of the Director's Order are available from the Commission's Public Reference Room, 888 First Street, NE., Washington, DC 20426. The Order may also be viewed on the Commission's Web site at *http://www.ferc.gov*, using the eLibrary link. Enter the docket number excluding the last three digits in the docket number filed to access the document. Comments, protests, and interventions may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages electronic filings.

Magalie R. Salas,

Secretary.

[FR Doc. E6–10691 Filed 7–7–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP06–402–000]

Mardi Gras Pipeline, L.L.C.; Notice of Application

June 30, 2006.

Take notice that on June 21, 2006, Mardi Gras Pipeline, L.L.C. (Mardi Gras), 226 E. Gibson Street, Covington, Louisiana 70433, filed with the Commission an application under section 7 (c) of the Natural Gas Act to obtain a limited jurisdictional certificate to allow for the continued service to a single interstate gas transportation customer, and for a determination that Mardi Gras may otherwise operate its system as a non-jurisdictional gathering facility. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site Web at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC at FERCOnlineSupport@gerc.gov or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

Any questions regarding the petition should be directed to John S. Burge, Mardi Gras Pipeline, L.L.C., P.O. Box 974 Covington, LA 70434–0974, and Tel: (985) 893–5883 or e-mail *JBurge@progasinc.com*, or you may contact Robert Christin, Van Ness Feldman, P.C., 1050 Thomas Jefferson Street, NW., Suite 700 Washington, DC 20007, and Tel.: (202) 298–1987 or Fax: (202) 338–2416 or *RFC@.vnf.com*.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the comment date stated below file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made in the proceeding with the Commission and must mail a copy to the applicant and to every other party. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Protests and interventions may be filed electronically via the Internet in lieu of paper; see, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages electronic filings.

Comment Date: July 21, 2006.

Magalie R. Salas,

Secretary.

[FR Doc. E6–10688 Filed 7–7–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ES06–49–001]

Michigan Electric Transmission Company, LLC; Notice of Filing

June 30, 2006.

Take notice that on June 22, 2006, Michigan Electric Transmission Company, LLC filed additional information, pursuant to 18 CFR 34.4(c), (d), and (e) of part 34 of the Commission's Regulations, to supplement its Section 204 application filed on May 19, 2006.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant and all the parties in this proceeding.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on July 13, 2006.

Magalie R. Salas,

Secretary.

[FR Doc. E6–10694 Filed 7–7–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP06–403–000]

Northern Natural Gas Company; Notice of Application

June 30, 2006.

Take notice that on June 23, 2006, Northern Natural Gas Company (Northern), 1111 South 103rd Street, Omaha, Nebraska 68124, filed in Docket No. CP06–403–000, an application pursuant to sections 7 (b) and (c) of the Natural Gas Act (NGA) and part 157 of the Commission's Regulations, for authorization to abandon certain pipeline facilities and the issuance of a certificate of public convenience and necessity to construct, modify and operate certain compression, pipeline and TBS facilities located in Iowa and Minnesota, all as more fully set forth in the application which is on file with the Commission and open to public inspection. This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

In its application, Northern asserts that the installation of the proposed facilities will provide approximately 374,000 Dth/day of incremental peak day entitlement. Northern also states the proposal herein is a result of an analysis conducted following Open Seasons soliciting interest for an expansion project in its market Area (Northern Lights) that would be effective beginning November 1, 2007. The estimated capital cost for the facilities proposed herein is $129,222,000. Northern is also requesting herein: Approval for rolled-in rate treatment of the expansion costs; approval to construct certain facilities in 2008; approval to use certain variances to the Commission's Plans and Procedures; and Commission issuance of an order granting approval for the proposed facilities as expeditiously as possible, but no later than March 1, 2007.

The National Environmental Policy Act (NEPA) review of the proposal will begin only after the Cultural Resources information required in part 380, Appendix A, Section 380.12 of the regulations has been filed with the Commission and found by staff to be sufficient.

Any questions regarding this application should be directed to Michael T. Loeffler, Director, Certificates and Government Affairs for Northern, 1111 South 103rd Street, Omaha, Nebraska 68124, at (402) 398–7103 or Donna Martens, Senior Regulatory Analyst, at (402) 398–7138.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the comment date stated below, file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission.

Environmental commentors will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commentors will not be required to serve copies of filed documents on all other parties. However, the non-party commentors will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link at *http://www.ferc.gov.* The Commission strongly encourages intervenors to file electronically. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

Comment Date: July 21, 2006.

Magalie R. Salas,

Secretary.

[FR Doc. E6–10689 Filed 7–7–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER06–764–000, ER06–764–001]

The Premcor Refining Group, Inc.; Notice of Issuance of Order

June 30, 2006.

The Premier Refining Group, Inc. (Premcor Refining) filed an application for market-based rate authority, with an accompanying rate schedule. The proposed market-based rate schedule provides for the sale of energy, capacity and ancillary services at market-based rates. Premcor Refining also requested waivers of various Commission regulations. In particular, Premcor Refining requested that the Commission grant blanket approval under 18 CFR part 34 of all future issuances of securities and assumptions of liability by Premcor Refining.

On June 27, 2006, pursuant to delegated authority, the Director, Division of Tariffs and Market Development—West, granted the requests for blanket approval under part 34. The Director's order also stated that the Commission would publish a separate notice in the **Federal Register** establishing a period of time for the filing of protests. Accordingly, any person desiring to be heard or to protest the blanket approvals of issuances of securities or assumptions of liability by Premcor Refining should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. 18 CFR 385.211, 385.214 (2004).

Notice is hereby given that the deadline for filing motions to intervene or protest is July 27, 2006.

Absent a request to be heard in opposition by the deadline above, Premcor Refining is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of Premcor Refining, compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approvals of Premcor Refining's issuances of securities or assumptions of liability.

Copies of the full text of the Director's Order are available from the Commission's Public Reference Room, 888 First Street, NE., Washington, DC 20426. The Order may also be viewed on the Commission's Web site at *http://www.ferc.gov,* using the eLibrary link. Enter the docket number excluding the last three digits in the docket number filed to access the document. Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages electronic filings.

Magalie R. Salas,

Secretary.

[FR Doc. E6–10693 Filed 7–7–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

July 3, 2006.

Take notice that the Commission received the following electric rate filings.

Docket Numbers: ER03–693–003.

Applicants: ISG Sparrows Point LLC.

Description: ISG Sparrows Point LLC submits an amendment to its May 9, 2006 updated market power analysis in compliance with the Commission's orders dated May 7, 2003 and May 13, 2004.

Filed Date: June 28, 2006.

Accession Number: 20060629–0096.

Comment Date: 5 p.m. Eastern Time on Wednesday, July 19, 2006.

Docket Numbers: ER03–908–002.

Applicants: Fulcrum Power Marketing LLC.

Description: Fulcrum Power Marketing, LLC submits its triennial market power update pursuant to the Commission's order issued June 30, 2003.

Filed Date: June 28, 2006.

Accession Number: 20060630–0143.

Comment Date: 5 p.m. Eastern Time on Wednesday, July 19, 2006.

Docket Numbers: ER04–708–001.

Applicants: Horsehead Corp.

Description: Horsehead Corp. submits its amended petition for acceptance of their triennial market power analysis and market-based rate compliance filings.

Filed Date: June 29, 2006.

Accession Number: 20060703–0202.

Comment Date: 5 p.m. Eastern Time on Thursday, July 20, 2006.

Docket Numbers: ER06–819–001.

Applicants: Consolidated Edison Energy Massachusetts.

Description: Consolidated Edison Energy Massachusetts, Inc.'s request that page 6 be added to the June 26, 2006 response to Question 8.d of the May 26, 2006 deficiency letter.

Filed Date: June 28, 2006.

Accession Number: 20060630–0117.

Comment Date: 5 p.m. Eastern Time on Wednesday, July 19, 2006.

Docket Numbers: ER06–1118–001.

Applicants: ECP Energy, LLC.

Description: ECP Energy, LLC submits the Amended Application for order accepting initial tariff, waiving regulations, and granting blanket approvals.

Filed Date: June 29, 2006.

Accession Number: 20060703–0204.

Comment Date: 5 p.m. Eastern Time on Thursday, July 20, 2006.

Docket Numbers: ER06–1175–000.
Applicants: Delmarva Power & Light Company.
Description: Delmarva Power & Light Co. submits the Amended and Restated Mutual Operating Agreements with Town of Smyrna.
Filed Date: June 27, 2006.
Accession Number: 20060629–0094.
Comment Date: 5 p.m. Eastern Time on Tuesday, July 18, 2006.

Docket Numbers: ER06–1176–000.
Applicants: Carolina Power & Light Company.
Description: Carolina Power & Light Co. dba Progress Energy Carolinas, Inc. submits the Standard Large Generator Interconnection Agreement with North Carolina Electric Membership Corp.
Filed Date: June 28, 2006.
Accession Number: 20060629–0095.
Comment Date: 5 p.m. Eastern Time on Wednesday, July 19, 2006.

Docket Numbers: ER06–1182–000.
Applicants: Calumet Energy Team, LLC.
Description: Calumet Energy Team, LLC submits a rate schedule under which it specifies revenue requirement for providing Reactive Supply and Voltage Control from Generation Sourced Services.
Filed Date: June 29, 2006.
Accession Number: 20060703–0203.
Comment Date: 5 p.m. Eastern Time on Thursday, July 20, 2006.

Docket Numbers: ER06–1183–000.
Applicants: LG&E Energy LLC.
Description: LG&E Energy, LLC et al. submit compliance filing in accordance with FERC's March 17, 2006 Order.
Filed Date: June 28, 2006.
Accession Number: 20060703–0057.
Comment Date: 5 p.m. Eastern Time on Wednesday, July 19, 2006.

Docket Numbers: ER06–1184–000.
Applicants: Vermont Electric Power Company.
Description: Vermont Electric Power Co. submits a notice of cancellation for Rate Schedule 205, which is its certificate of concurrence in the ''REMVEC II Agreement.''
Filed Date: June 29, 2006.
Accession Number: 20060703–0056.
Comment Date: 5 p.m. Eastern Time on Thursday, July 20, 2006.

Docket Numbers: ER06–1185–000.
Applicants: Pace Global Asset Management, LLC.
Description: Pace Global Asset Management, LLC submits Energy Management Agreement, request for confidential treatment and request for blanket authority and waivers.
Filed Date: June 29, 2006.
Accession Number: 20060703–0048.
Comment Date: 5 p.m. Eastern Time on Thursday, July 20, 2006.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St., NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed dockets(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E6–10702 Filed 7–7–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP05–91–000; Docket No. CP05–380–000]

Calhoun LNG, L.P.; Point Comfort Pipeline Company, L.P.; Notice of Availability of the Draft Environmental Impact Statement for the Calhoun LNG Terminal and Pipeline Project

June 30, 2006.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) has prepared this draft Environmental Impact Statement (EIS) for the construction and operation of the liquefied natural gas (LNG) import terminal and natural gas pipeline facilities (referred to as the Calhoun LNG Project or Project) as proposed by Calhoun LNG, L.P. and Point Comfort Pipeline Company, L.P. (collectively referred to as Calhoun Point Comfort) in the above-referenced dockets.

The draft EIS was prepared to satisfy the requirements of the National Environmental Policy Act (NEPA). The staff concludes that approval of the Calhoun LNG Project, with appropriate mitigating measures as recommended, would have limited adverse environmental impact. The draft EIS evaluates alternatives to the proposal, including system alternatives, alternative sites for the LNG import terminal, and pipeline alternatives.

The purpose of the Calhoun LNG Project is to provide facilities necessary to import, store, and vaporize on average about 1.0 billion cubic feet per day of LNG to provide a competitive supply of natural gas to local industrial customers, such as Formosa Hydrocarbons Company and Formosa Plastics Corporation, and other energy-consuming customers in Texas and deliver natural gas into existing interstate and intrastate natural gas pipelines near Edna, Texas. In order to accomplish this purpose, Calhoun Point Comfort proposes to construct and operate a new LNG import terminal including an LNG ship berth and unloading facilities on the southeastern shoreline of Lavaca Bay, south of Point Comfort, in Calhoun County, Texas. In addition, Calhoun Point Comfort would construct and operate a new natural gas pipeline and ancillary facilities extending northward from the LNG terminal to natural gas pipeline interconnects southwest of Edna, in Jackson County, Texas.

The draft EIS addresses the potential environmental effects of the construction and operation of the

following LNG terminal and natural gas pipeline facilities:

- A new marine terminal along Lavaca Bay that would include one berth to unload up to 120 LNG ships per year;
- Four 16-inch-diameter stainless steel unloading arms;
- Two single containment LNG storage tanks each with a nominal working volume of approximately 160,000 m^3 (1,006,000 barrels);
- Three in-tank pumps per LNG storage;
- Four low pressure (LP) and four high pressure (HP) sendout pumps;
- Six first-stage submerged combustion vaporizers (SCV) and six second-stage SCVs;
- A boil-off gas (BOG) and vapor removal system;
- A flare system that would include a 100-foot flare stack;
- Various support buildings and piping structures at the LNG terminal site;
- 27.1 miles of 36-inch-diameter natural gas pipeline;
- A 0.25 mile of 8-inch-diameter lateral and 0.25 mile of 16-inch-diameter lateral;
- Ten delivery points/interconnects; and
- A pig launcher facility and mainline valves.

The draft EIS has been placed in the public files of the FERC and is available for public inspection at: Federal Energy Regulatory Commission, Public Reference and Files Maintenance Branch, 888 First Street, NE., Room 2A, Washington, DC 20426. (202) 502–8371.

A limited number of copies of the draft EIS are available from the Public Reference and Files Maintenance Branch identified above. In addition, copies of the final EIS have been mailed to Federal, State, and local agencies; elected officials; public interest groups; libraries, individuals and affected landowners who requested a copy of the draft EIS; and parties to these proceedings.

Comment Procedures and Public Meeting

Any person wishing to comment on the draft EIS may do so. To ensure consideration prior to a Commission decision on the proposal, it is important that we receive your comments before the date specified below. Please carefully follow these instructions to ensure that your comments are received and properly recorded:

- Send an original and two copies of your comments to: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Room 1A, Washington, DC 20426.
- Reference Docket Nos. CP05–91–000 and CP05–380–000.
- Label one copy of the comments for the attention of the Gas Branch 2.
- Mail your comments so that they will be received in Washington, DC on or before August 21, 2006.

Please note that the Commission strongly encourages electronic filing of any comments or interventions or protests to this proceeding. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.gov* under the ''e-Filing'' link and the link to the User's Guide. Before you can file comments you will need to create a free account, which can be created by clicking on ''Login to File'' and then ''New User Account.'' You will be asked to select the type of filing you are making. This filing is considered a ''Comment on Filing.''

In addition to or in lieu of sending written comments, we invite you to attend the public comment meeting scheduled as follows:

August 17, 2006, 7 p.m. (CST), Bauer Community Center, 2300 N. Highway 35, Port Lavaca, Texas 77979. Telephone: (361) 552–1234.

Interested groups and individuals are encouraged to attend and present oral comments on the draft EIS. Transcripts of the meetings will be prepared.

After these comments are reviewed, any significant new issues are investigated, and modifications are made to the draft EIS, a final EIS will be published and distributed by the staff. The final EIS will contain the staff's responses to timely comments received on the draft EIS.

Comments will be considered by the Commission but will not serve to make the commentor a party to the proceeding. Any person seeking to become a party to the proceeding must file a motion to intervene pursuant to Rule 214 of the Commission's Rules of Practice and Procedures (18 CFR 385.214). Anyone may intervene in this proceeding based on this draft EIS. You must file your request to intervene as specified above. [1] You do not need intervenor status to have your comments considered.

The draft EIS has been placed in the public files of the FERC and is available for distribution and public inspection at: Federal Energy Regulatory Commission, Public Reference Room, 888 First Street, NE., Room 2A, Washington, DC 20426. (202) 208–1371.

[1] Interventions may also be filed electronically via the Internet in lieu of paper. See the previous discussion on filing comments electronically.

Hard-copies of the draft EIS have been mailed to Federal, State, and local agencies; public interest groups; individuals and affected landowners who requested a copy of the draft EIS or provided comments during scoping; libraries; newspapers; and parties to this proceeding. A limited number of documents and CD-ROMs are available from the Public Reference Room identified above.

Additional information about the project is available from the Commission's Office of External Affairs, at 1–866–208–FERC or on the FERC Internet Web site (*http://www.ferc.gov*) using the eLibrary link. Click on the eLibrary link, click on ''General Search'' and enter the docket number excluding the last three digits in the Docket Number field. Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at 1–866–208–3676, or for TTY, contact (202) 502–8659. The eLibrary link on the FERC Internet Web site also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission now offers a free service called eSubscription which allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries and direct links to the documents. Go to the eSubscription link on the FERC Internet Web site.

Magalie R. Salas,

Secretary.

[FR Doc. E6–10687 Filed 7–7–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2503–091]

Duke Power Company, LLC; Notice of Availability of Environmental Assessment

June 30, 2006.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission) regulations, 18 CFR part 380 (Order No. 486, 52 FR 47897), the Office of Energy Projects has reviewed an application for non-project use of project lands and

waters at the Keowee-Toxaway Hydroelectric Project (FERC No. 2503), and has prepared an Environmental Assessment (EA) for the proposed non-project use. The non-project use of project lands and waters is located on Lake Keowee in Pickens County, South Carolina.

In the application, Duke Power requests Commission authorization to lease 63 acres of project land to Warpath Development, Inc. to construct and maintain a public recreation area at the Warpath Access Area. The public recreation area would include water related facilities and services, outdoor recreation opportunities, lodging, and dining. The EA contains Commission staff's analysis of the probable environmental impacts of the proposal and concludes that approving the licensee's application would not constitute a major federal action significantly affecting the quality of the human environment.

The EA is attached to a Commission order titled ''Order Approving Non-Project Use of Project Lands and Waters,'' which was issued June 30, 2006, and is available for review and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE., Room 2A, Washington, DC 20426. The EA may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''elibrary'' link. Enter the project number (prefaced by P–) and excluding the last three digits, in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or for TTY, contact (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E6–10696 Filed 7–7–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RM06–16–000]

Mandatory Reliability Standards for the Bulk-Power System; Supplemental Notice of Technical Conference

June 30, 2006.

As announced in a Notice of Technical Conference issued on May 31, 2006, in the above referenced proceeding, a technical conference will be held in the offices of the Commission, 888 First Street, NE., Washington, DC on July 6, 2006, from approximately 9:30 a.m. to 3 p.m. (EST). All interested persons may attend and registration is not required.

The conference will assist in developing a public record in anticipation of the Commission acting on a petition filed by the North American Electric Reliability Council (NERC) for approval of reliability standards. An agenda is included with this notice.

Transcripts of the conference will be immediately available from Ace Reporting Company (202–347–3700 or 1–800–336–6646) for a fee. They will be available for the public on the Commission's eLibrary system seven calendar days after the Commission receives the transcript.

A free Webcast of this event is available through *http://www.ferc.gov.* Anyone with Internet access who desires to view this event can do so by navigating to *http://www.ferc.gov*'s Calendar of Events and locating this event in the Calendar. The event will contain a link to its Webcast. The Capitol Connection provides technical support for the Webcasts and offers access to the open meetings via television in the DC area and via phone bridge for a fee. If you have any questions, visit *http://www.CapitolConnection.org* or contact Danelle Perkowski or David Reininger at 703–993–3100.

Commission conferences are accessible under section 508 of the Rehabilitation Act of 1973. For accessibility accommodations please send an e-mail to *accessibility@ferc.gov* or call toll free 866–208–3372 (voice) or 202–208–1659 (TTY), or send a fax to 202–208–2106 with the required accommodations.

For more information about the conference, please contact Sarah McKinley at (202) 502–8004 (*sarah.mckinley@ferc.gov*).

Magalie R. Salas,

Secretary.

Review of the North American Electric Reliability Council's Proposed Reliability Standards Federal Energy Regulatory Commission Technical Conference

July 6, 2006, 9:30 a.m.–3 p.m.

9:30 a.m.—Opening Remarks, Joseph T. Kelliher, FERC Chairman.

9:45 a.m.—Introductions, Joseph McClelland, Director, Division of Reliability, Office of Energy Markets and Reliability, FERC.

9:50 a.m.—Panel 1: Effectiveness of North American Electric Reliability Council's (NERC's) Proposed Reliability Standards.

Panelists will provide their views on the proposed Reliability Standards in the context of the May 11, 2006 Staff Preliminary Assessment, focusing on the following questions:

- Do the proposed standards meet the criteria established in Order No. 672 [1] for Commission approval?
- To the extent some standards do not meet the criteria, which should be addressed first? Are there some that have a greater impact on reliability?
- Is it appropriate to focus on the Blackout Report recommendations that have not yet been addressed by the standards, or are there other standards that should receive a higher priority?
- Should all Reliability Standards have performance metrics to gauge the effectiveness of the standards? How quickly can such specific performance metrics be developed? Is there another process that could be used to develop metrics for existing standards?
- What are the implications of applying the EPAct definition of the Bulk Power System instead of the NERC definition of the Bulk Electric System?
- How do we define the ''Users, Owners, and Operators'' of the ''Bulk-Power System''?
- How should a work plan be developed that schedules standards for revision? What are the opportunities for participation in this process by the interested stakeholders?
- What coordination is necessary with other State, Federal, and/or international regulators to ensure a good transition to mandatory reliability standards?
- What process should the United States, Canada, and Mexico follow for review and approval of Reliability Standards to meet possible time constraints?

Panelists:

Richard P. (Rick) Sergel, President and CEO, North American Electric Reliability Council.

Michael Morris, President and CEO, American Electric Power, on behalf of Edison Electric Institute.

Charles Yeung, Executive Director, Interregional Affairs, Southwest Power Pool, on behalf of the ISO/RTO Council.

Scott M. Helyer, Vice President, Transmission, Tenaska, Inc., and Chairman, Energy Standards Working Group, Electric Power Supply Association.

Canadian Representative, to be announced.

[1] Rules Concerning Certification of the Electric Reliability Organization; and Procedures for the Establishment, Approval, and Enforcement of Electric Reliability Standards, 114 FERC ¶ 61,104 (2006).

12 p.m.—Lunch.

1 p.m.—Panel 2: What's Needed To Achieve the Goal.

Panelists will address the questions listed above, providing a more in-depth assessment of the standards and appropriate priorities, processes, and metrics needed to ensure a reliable Bulk Power System.

Panelists:

Steve Ruekert, Director, Standards and Compliance, Western Electric Coordinating Council.

Allen Mosher, Director of Policy Analysis, American Public Power Association.

Steven C. Cobb, Manager, Transmission Services, Salt River Project, on behalf of the Large Public Power Council.

David A. Whiteley, Senior Vice President, Energy Delivery Services, Ameren, on behalf of the Edison Electric Institute.

James C. Nixon, Director, Energy Markets, Alcoa Inc.

Canadian Representative, to be announced.

3 p.m.—Concluding Remarks, Joseph T. Kelliher, FERC Chairman.

[FR Doc. E6–10698 Filed 7–7–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RM98–1–000]

Records Governing Off-the Record Communications; Public Notice

June 30, 2006.

This constitutes notice, in accordance with 18 CFR 385.2201(b), of the receipt of prohibited and exempt off-the-record communications.

Order No. 607 (64 FR 51222, September 22, 1999) requires Commission decisional employees, who make or receive a prohibited or exempt off-the-record communication relevant to the merits of a contested proceeding, to deliver to the Secretary of the Commission, a copy of the communication, if written, or a summary of the substance of any oral communication.

Prohibited communications are included in a public, non-decisional file associated with, but not a part of, the decisional record of the proceeding. Unless the Commission determines that the prohibited communication and any responses thereto should become a part of the decisional record, the prohibited off-the-record communication will not be considered by the Commission in reaching its decision. Parties to a proceeding may seek the opportunity to respond to any facts or contentions made in a prohibited off-the-record communication, and may request that the Commission place the prohibited communication and responses thereto in the decisional record. The Commission will grant such a request only when it determines that fairness so requires. Any person identified below as having made a prohibited off-the-record communication shall serve the document on all parties listed on the official service list for the applicable proceeding in accordance with Rule 2010, 18 CFR 385.2010.

Exempt off-the-record communications are included in the decisional record of the proceeding, unless the communication was with a cooperating agency as described by 40 CFR 1501.6, made under 18 CFR 385.2201(e)(1)(v).

The following is a list of off-the-record communications recently received by the Secretary of the Commission. The communications listed are grouped by docket numbers in ascending order. These filings are available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary link. Enter the docket number, excluding the last three digits, in the docket number field to access the document. For assistance, please contact FERC, Online Support at *FERCOnlineSupport@ferc.gov* or toll free at (866)208–3676, or for TTY, contact (202)502–8659.

Exempt:

Docket No.	Date received	Presenter or requester
1. CP05–420–000	6–29–06	Rome A. Emmons, III.
2. CP06–369–000	6–14–06	Hon. Harold Rogers.
3. EL03–180–000, *et al.*	6–22–06	Hon. Jay Inslee. Hon. Rick Larsen. Hon. Jim McDermott.
4. ER06–427–000	6–20–06	Hon. John F. Tierney.
5. Project No. 2100–000	6–20–06	Hon. Barbara Boxer.
6. Project No. 2145–060	6–27–06	Timothy Garman.
7. Project No. 11858–002	6–21–06	Karen A. Goebel.

Magalie R. Salas,

Secretary.

[FR Doc. E6–10699 Filed 7–7–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. AD06–8–000]

Discussions With Utility and Railroad Representatives on Market and Reliability Matters; Notice on Filing Comments

June 30, 2006.

On June 15, 2006, the Federal Energy Regulatory Commission (FERC) met with utility and railroad representatives to discuss railroad coal-delivery matters and their impact on markets and electric reliability.

Additional comments in this docket will be accepted until July 17, 2006.

Magalie R. Salas,

Secretary.

[FR Doc. E6–10701 Filed 7–7–06; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OA–2006–0566; FRL–8193–3]

Agency Information Collection Activities: Proposed Collection; Comment Request; Assessment of EPA Partnership Programs, EPA ICR Number 2225.01, OMB Control No: New

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), this document announces that EPA is planning to submit a request for a new Information Collection Request (ICR) to the Office of Management and Budget (OMB). Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection as described below.

DATES: Comments must be submitted on or before September 8, 2006.

ADDRESSES: Submit your comments, referencing Docket ID No. EPA–HQ–OA–2006–0566 by one of the following methods:

- *http://www.regulations.gov*: Follow the on-line instructions for submitting comments.
- E-mail: *oei.docket@epa.gov*.
- Fax: (202) 566–1753.
- Mail: OEI Docket, Environmental Protection Agency, Mailcode: 2822T, 1200 Pennsylvania Ave., NW., Washington, DC 20460.
- Hand Delivery: OEI Docket in the EPA Docket Center (EPA/DC), EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–HQ–OA–2006–0566. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or e-mail. The *http://www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm*.

FOR FURTHER INFORMATION CONTACT: Jamie Burnett, Office of Policy, Economics, and Innovation, Mail Code: 1807T, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 566–2205; fax number: (202) 566–2200; e-mail address: *burnett.jamie@epa.gov*.

SUPPLEMENTARY INFORMATION:

How Can I Access the Docket and/or Submit Comments?

EPA has established a public docket for this ICR under Docket ID No. EPA–HQ–OA–2006–0566, which is available for online viewing at *http://www.regulations.gov*, or in person viewing at the OEI Docket in the EPA Docket Center (EPA/DC), EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The EPA/DC Public Reading Room is open from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the OEI Docket is (202) 566–1752.

Use *http://www.regulations.gov* to obtain a copy of the draft collection of information, submit or view public comments, access the index listing of the contents of the docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''search,'' then key in the docket ID number identified in this document.

What Information Is EPA Particularly Interested In?

Pursuant to section 3506(c)(2)(A) of the PRA, EPA specifically solicits comments and information to enable it to:

(i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

(ii) Evaluate the accuracy of the Agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) Enhance the quality, utility, and clarity of the information to be collected; and

(iv) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses. In particular, EPA is requesting comments from very small businesses (those that employ less than 25) on examples of specific additional efforts that EPA could make to reduce the paperwork burden for very small businesses affected by this collection.

What Should I Consider When I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

(1) Explain your views as clearly as possible and provide specific examples.

(2) Describe any assumptions that you used.

(3) Provide copies of any technical information and/or data you used that support your views.

(4) If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

(5) Offer alternative ways to improve the collection activity.

(6) Make sure to submit your comments by the deadline identified under **DATES**.

(7) To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

What Information Collection Activity or ICR Does This Apply to?

Docket ID No. EPA–HQ–OA–2006–0566.

Affected entities: Entities potentially affected by this action are participants

in all of EPA's Partnership Programs, including businesses, governments, and members of the community.

Title: Assessment of EPA Partnership Programs.

ICR numbers: EPA ICR No. 2225.01, OMB Control No: New.

ICR status: This ICR is for a new information collection activity. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the CFR, after appearing in the **Federal Register** when approved, are listed in 40 CFR part 9, are displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instrument or form, if applicable. The display of OMB control numbers in certain EPA regulations is consolidated in 40 CFR Part 9.

Abstract: The Environmental Protection Agency (EPA) is seeking approval for a three-year generic clearance from the Office of Management and Budget (OMB) to develop a generic ICR to collect data to be used for performance measurement of EPA Partnership Programs. This will be a voluntary collection of information to assess the activities of EPA Partnership Programs. The proposed generic measurement ICR will involve voluntary collections of information via surveys to assess the results of EPA Partnership Programs. Performance measurement data collected will detail awareness of associated environmental activities, behavior change, and associated environmental results. EPA proposes to use surveys and questionnaires to assess activities for program purpose and design, strategic planning, program management, and program results to determine if the goals of the program are being met.

All assessments undertaken under this ICR will follow stringent procedures to ensure that data are collected and used properly and efficiently. This ICR will provide anecdotal data for the purpose of informing EPA of the perceived effectiveness of partnership programs and will also allow partnership programs to collect data on the environmental results of partner activities due to participation. The information collection is voluntary, and will be limited to non-sensitive data concerning participation in partnership programs.

To help fulfill the broad mandate of protecting human health and the environment, EPA works with businesses, communities, State and local governments, and other organizations to achieve environmental goals through partnership programs. Partnership programs provide organizations with the information and assistance necessary to achieve and maintain various environmental goals.

EPA believes that measuring the performance of partnership programs is important to ensure that partnership programs are reaching the intended audience, providing valuable resources, and achieving the desired environmental results. Understanding this will allow EPA to better design and manage these partnership programs to meet the needs of the participants and to meet EPA's environmental goals. A generic measurement ICR will significantly increase the ability of EPA Partnership Programs to: Determine and evaluate the effectiveness of these partnership programs as well as help the programs obtain data to successfully complete PART reviews; increase the consistency of program performance data as an alternative/adjunct to traditional regulatory approaches for achieving environmental results; minimize approval burden on OMB as submissions will be shorter and of higher quality via the generic measurement ICR process; and reduce burden on potential respondents by limiting the number of requests for information.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 2.2 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements which have subsequently changed; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

The ICR provides a detailed explanation of the Agency's estimate, which is only briefly summarized here:

Estimated total number of potential respondents: 16,000.

Frequency of response: On occasion.

Estimated total average number of responses for each respondent: 1–2.

Estimated total annual burden hours: 11,556 hours.

Estimated total annual costs: $769,702.

There are no costs for capital investment or maintenance and operation associated with this ICR.

What Is the Next Step in the Process for This ICR?

EPA will consider the comments received and amend the ICR as appropriate. The final ICR package will then be submitted to OMB for review and approval pursuant to 5 CFR 1320.12. At that time, EPA will issue another **Federal Register** notice pursuant to 5 CFR 1320.5(a)(1)(iv) to announce the submission of the ICR to OMB and the opportunity to submit additional comments to OMB. If you have any questions about this ICR or the approval process, please contact the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

Dated: June 22, 2006.

David Widawsky,

Acting Director, Office of Environmental Policy Innovation, Office of Policy, Economics and Innovation, Office of the Administrator.

[FR Doc. E6–10737 Filed 7–7–06; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[Regional Docket No. II–2005–06; FRL–8192–7]

Clean Air Act Operating Permit Program; Petition for Objection to State Operating Permit for the Camden Cogeneration Plant (CCP)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of final order on petition to object to a State operating permit.

SUMMARY: This document announces that the EPA Administrator has responded to a petition asking EPA to object to an operating permit issued by the New Jersey Department of Environmental Protection (NJDEP). Specifically, the Administrator has partially granted and partially denied a joint petition submitted by the South Jersey Environmental Alliance (SJEJA), and the New Jersey Public Interest Research Group (NJPIRG), to object to the state operating permit issued to the Camden Cogeneration Plant.

Pursuant to section 505(b)(2) of the Clean Air Act (Act), Petitioner (SJEJA) may seek judicial review of those portions of the CCP petition which EPA

denied in the United States Court of Appeals for the appropriate circuit. Any petition for review shall be filed within 60 days from the date this notice appears in the **Federal Register**, pursuant to section 307 of the Act.

ADDRESSES: You may review copies of the final order, the petition, and all relevant information at the EPA Region 2 Office, 290 Broadway, New York, New York 10007–1866. If you wish to examine these documents, you should make an appointment at least 24 hours before visiting day. Additionally, the final order for CCP is available electronically at: *http://www.epa.gov/region07/programs/artd/air/title5/petitiondb/petitiondb2005.htm*.

FOR FURTHER INFORMATION CONTACT: Steven Riva, Chief, Permitting Section, Air Programs Branch, Division of Environmental Planning and Protection, EPA, Region 2, 290 Broadway, 25th Floor, New York, New York 10007–1866, telephone (212) 637–4074.

SUPPLEMENTARY INFORMATION: The Act affords EPA a 45-day period to review, and object to as appropriate, operating permits proposed by State permitting authorities. Section 505(b)(2) of the Act authorizes any person to petition the EPA Administrator within 60 days after the expiration of this review period to object to State operating permits if EPA has not done so. Petitions must be based only on objections to the permit that were raised with reasonable specificity during the public comment period provided by the State, unless the petitioner demonstrates that it was impracticable to raise these issues during the comment period or the grounds for the issues arose after this period.

On October 26, 2005, the EPA received a petition from Petitioners, requesting that EPA object to the issuance of the title V operating permit for the CCP based on the following allegations: (1) The permit lacks a statement of basis; (2) the permit fails to include a compliance schedule; (3) CCP's past violations are not properly addressed through permit enforcement action and in the permitting process; (4) the permit needs additional monitoring, recordkeeping and reporting provisions; (5) the permit failed to adequately limit emissions of particulate matter; and (6) the permit failed to enforce environmental justice requirements.

On May 25, 2006, the Administrator issued an order partially granting and partially denying the petition on CCP. The order explains the reasons behind EPA's conclusion that the NJDEP must re-issue the permit to include annual tune-up requirements for the turbine. The order also explains the reasons for denying Petitioners' remaining claims.

Dated: June 15, 2006.

Alan J. Steinberg,

Regional Administrator, Region 2.

[FR Doc. E6–10735 Filed 7–7–06; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8191–1]

Notice of Prevention of Significant Deterioration Final Determination for Newmont Nevada Energy Investment

AGENCY: Environmental Protection Agency (''EPA'').

ACTION: Notice of Final Action; correction.

SUMMARY: This document corrects information published in the **Federal Register** on May 5, 2006 concerning the issuance of a Prevention of Significant Deterioration (''PSD'') permit for Newmont Nevada Energy Investment, LLC (''Newmont''). We are also providing additional information regarding the issuance of the permit, as well as the denial of review of the permit by EPA's Environmental Appeals Board (''EAB''), that was not published in our May 5, 2006 **Federal Register** notice.

FOR FURTHER INFORMATION CONTACT: Copies of the permit are available for public inspection and can be obtained by contacting: Roger Kohn (AIR–3), U.S. Environmental Protection Agency, Region 9, 75 Hawthorne Street, San Francisco, CA 94105. (415) 972–3973. e-mail: *kohn.roger@epa.gov*.

Readers interested in more detail on the appeal issues raised by the petitioner and the reasons for the EAB's denial of review may download EAB's Order Denying Review from the EAB Web site: *http://yosemite.epa.gov/oa/EAB_Web_Docket.nsf/PSD+Permit+Appeals+(CAA)?OpenView*.

Notification of EAB Final Decision

The Nevada Department of Conservation and Natural Resources, Division of Environmental Protection, acting under authority of a PSD delegation agreement, issued a PSD permit to Newmont on May 5, 2005, granting approval to construct the TS Power Plant, a 200 megawatt pulverized coal-fired boiler plant to be located near Dunphy, NV. The Association for Clean Energy (''ACE'') filed a petition for review with the EAB on June 3, 2005. The EAB denied review of the petition on December 21, 2005. The permit became effective on December 21, 2005, not on June 4, 2005 as stated in our May 5, 2006 **Federal Register** notice.

Judicial review of the permit decision, to the extent it is available pursuant to section 307(b)(1) of the Clean Air Act (''CAA''), may be sought by filing a petition for review in the United States Court of Appeals for the Ninth Circuit within 60 days of our May 5, 2006 **Federal Register** notice.

Dated: June 23, 2006.

Deborah Jordan,

Director, Air Division, Region 9.

[FR Doc. E6–10742 Filed 7–7–06; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8192–2]

Availability of Fiscal Year 2005 Grantee Performance Evaluation Reports for Iowa, Kansas, Nebraska, and the Unified Government of Wyandotte County, KS

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability of Clean Air Act, section 105 grantee performance evaluation reports.

SUMMARY: EPA's grant regulations (40 CFR 35.115) require the Agency to evaluate the performance of agencies which receive grants. EPA's regulations for regional consistency (40 CFR 56.7) require that the Agency notify the public of the availability of the reports of such evaluation. EPA performed end-of-year evaluations of three state air pollution control programs (Iowa Department of Natural Resources; Kansas Department of Health and Environment; Nebraska Department of Environmental Quality); and one local air pollution control program (Unified Government of Wyandotte County, Kansas). These evaluations were conducted to assess the agencies' performance under the grants awarded by EPA under authority of section 105 of the Clean Air Act.

ADDRESSES: Copies of the evaluation reports are available for public inspection at EPA's Region 7 office, 901 North 5th Street, Kansas City, Kansas 66101, in the Air Planning and Development Branch of the Air, RCRA and Toxics Division.

FOR FURTHER INFORMATION CONTACT: Evelyn VanGoethem, (913) 551–7659, or by e-mail at *vangoethem.evelyn@epa.gov*.

Dated: June 27, 2006.

William W. Rice,

Acting Regional Administrator, Region 7.

[FR Doc. E6–10741 Filed 7–7–06; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8190–8]

Notice of a Public Meeting on Designated Uses and Use Attainability Analyses

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of a public meeting.

SUMMARY: The Environmental Protection Agency (EPA) is holding a public meeting to discuss designated uses and use attainability analyses. The meeting is co-sponsored with the Water Environment Federation (WEF). The primary goals of the meeting are to help educate the public on current water quality standards regulations, guidance and practices related to designated uses and use attainability analyses, and to provide a forum for the public to join in discussions, ask questions, and provide feedback.

DATES: The meeting will be held on Monday, July 31, 2006 from 1:30 p.m. to 5:30 p.m. The meeting will continue on Tuesday, August 1, 2006, from 8:30 a.m. to 1 p.m. The meeting will be preceded by an optional introductory session on the basics of designated uses as they apply to water quality standards implementation, scheduled for Monday, July 31, 2006 from 9:30 a.m. to 12 noon.

ADDRESSES: The meeting will be held at the Sheraton Seattle Hotel, 1400 Sixth Avenue, Seattle, WA 98101. The telephone number for the hotel is (206) 621–9000. A block of sleeping rooms has been reserved. When making room reservations, please reference the group name ''EPA Multi-Stakeholders Meeting.'' The cutoff date for the reserved block of rooms is Friday, July 7.

FOR FURTHER INFORMATION CONTACT: Ms. Patricia Harrigan, Standards and Health Protection Division, MC 4305T, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; Telephone number: (202) 566–1666; Fax number: (202) 566–1054; e-mail address: *harrigan.patricia@epa.gov*.

SUPPLEMENTARY INFORMATION: The purpose of this public meeting is to help educate the public on current water quality standards regulations, guidance and practices related to designated uses and use attainability analyses, and to provide a forum for the public to join in discussions, ask questions, and provide feedback. EPA also welcomes written remarks received by July 31, 2006, which can be sent to Ms. Harrigan by e-mail or by mail at the address listed in the **FOR FURTHER INFORMATION CONTACT** section.

Special Accommodations

Any person needing special accommodations at this meeting, including wheelchair access, should contact Ms. Harrigan at the phone number or e-mail address listed in the **FOR FURTHER INFORMATION CONTACT** section. Requests for special accommodations should be made at least five business days in advance of the public meeting.

Dated: June 20, 2006.

Ephraim King,

Director, Office of Science and Technology.

[FR Doc. E6–10677 Filed 7–7–06; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL HOUSING FINANCE BOARD

Sunshine Act Meeting Notice; Announcing a Partially Open Meeting of the Board of Directors

TIME AND DATE: The open meeting of the Board of Directors is scheduled to begin at 10 a.m. on Wednesday, July 12, 2006. The closed portion of the meeting will follow immediately the open portion of the meeting.

PLACE: Board Room, First Floor, Federal Housing Finance Board, 1625 Eye Street, NW., Washington, DC 20006.

STATUS: The first portion of the meeting will be open to the public. The final portion of the meeting will be closed to the public.

MATTER TO BE CONSIDERED AT THE OPEN PORTION: *Federal Home Loan Bank Elections.* Consideration of a final rule to allow the Federal Home Loan Banks to identify and communicate skills needed on their boards of directors.

MATTER TO BE CONSIDERED AT THE CLOSED PORTION: *Periodic Update of Examination Program Development and Supervisory Findings.*

CONTACT PERSON FOR MORE INFORMATION: Shelia Willis, Paralegal Specialist, Office of General Counsel, at 202–408–2876 or *williss@fhfb.gov*.

Dated: July 5, 2006.

By the Federal Housing Finance Board.

John P. Kennedy,

General Counsel.

[FR Doc. 06–6112 Filed 7–6–06; 10:24 am]

BILLING CODE 6725–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at *www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than August 4, 2006.

A. Federal Reserve Bank of New York (Anne McEwen, Financial Specialist) 33 Liberty Street, New York, New York 10045-0001:

1. HSBC Holdings plc, HSBC Overseas Holdings (UK) Limited, both of London, United Kingdom; HSBC North America Inc., Buffalo, New York, HSBC Investments (North America) Inc., Wilmington, Delaware, HSBC North America Holdings Inc., Prospect Heights, Illinois, and HSBC USA Inc., New York, New York; to acquire HSBC National Bank USA, Bethesda, Maryland (a de novo bank).

Board of Governors of the Federal Reserve System, July 5, 2006.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. E6–10711 Filed 7–7–06; 8:45 am]

BILLING CODE 6210–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Program Support Center; Use of Federal Real Property To Assist the Homeless

AGENCY: Program Support Center, HHS.

ACTION: Final notice.

SUMMARY: Title V of the McKinney-Vento Homeless Assistance Act, 42 U.S.C. 11411 (Title V) authorizes the Secretary of Health and Human Services (the Secretary) to make suitable Federal properties categorized as excess or surplus available to representatives of persons experiencing homelessness as a permissible use in the protection of public health. This notice finalizes a policy revision under Title V to include permanent supportive housing as an allowable use of surplus real property to assist persons experiencing homelessness. The purpose of this policy revision is to increase the supportive housing and service opportunities available to communities as they respond to homelessness, and is consistent with efforts within Federal, State, and local governments, and communities themselves, to end chronic homelessness. This final notice follows publication of a notice and request for comments on January 26, 2006.

DATES: *Effective Date:* September 1, 2006.

FOR FURTHER INFORMATION CONTACT: John G. Hicks, Chief, Space Management Branch, Division of Property Management, Administrative Operations Service, Program Support Center, Room 5B–17, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857; telephone number (301) 443–2265.

SUPPLEMENTARY INFORMATION:

I. Discussion of the Public Comments on the Proposed Policy Revision

On January 26, 2006 (71 FR 4366), the U.S. Department of Health and Human Services (HHS) published a notice and request for comments that described a proposed policy revision under Title V to include permanent supportive housing as an allowable use of surplus real property to assist persons experiencing homelessness. The public comment period closed on February 28, 2006. HHS received comments from 16 respondents representing a variety of organizations and entities. Comments were received from: homeless service providers; homeless advocacy groups; a public housing authority; and Federal, State, and city government agencies.

II. General Comments About the Draft Notice

All of the comments received expressed support for the proposed policy revision. Eight of the respondents expressed support for the policy revision with no further comment.

Comment: Five of the respondents suggested that HHS should further revise the policy to allow all forms of non-supportive affordable permanent housing to be included as an eligible use under Title V.

HHS Response: Title V of the McKinney Act directs HHS to include, as a permissible use in the protection of public health, the furnishing of surplus real property to assist homeless individuals and families. The Secretary exercises the authority to approve permanent supportive housing programs for Title V, consistent with HHS' mission to protect the public health. The provision of low-income housing (*i.e.* the Section 8 Housing Choice Voucher Program) is under the purview of the U.S. Department of Housing and Urban Development (HUD). HHS, as the nation's public health agency, does not operate low-income housing programs, and does not intend to duplicate already existing programs operated by HUD. The proposed policy revision is intended to reaffirm HHS' 1992 determination that the provision of low-income housing does not constitute an appropriate public health use of surplus real property under Title V. In contrast, we are proposing a permanent supportive housing program that is long-term, community-based, and linked to supportive services for homeless persons with disabilities.

Comment: Three of the respondents recommended that the definition for permanent supportive housing should include the term ''affordable.''

HHS Response: HHS has modified the definition of permanent supportive housing to include the term affordable.

Comment: Three of the respondents recommended that the term ''disability'' should be explicitly defined.

HHS Response: HHS has included a definition for disability in the final Notice.

III. Background

The HHS Program Support Center (PSC) administers the Federal Real Property Assistance Program, the program that governs the transfer of surplus Federal real property for public health purposes under Title 40, section 550 of the United States Code, ''Public Buildings, Property, and Works,'' and the transfer of excess and surplus Federal real property pursuant to Title V.

Under Title V, a representative of persons experiencing homelessness may submit an application to the Secretary of HHS to acquire suitable excess or surplus Federal real property for use in the assistance of persons experiencing homelessness. In 1991, HHS, HUD, and the General Services Administration (GSA) jointly published a regulation implementing the provisions of Title V, codified at 45 CFR part 12a (the joint regulation). Title V authorizes the Secretary to make property in these categories available to representatives of persons experiencing homelessness, by lease or deed, as a public health use pursuant to subsections (a) to (d) of section 550 of Title 40, United States Code. In accordance with subsection (d) of Title 40, the Secretary may propose to sell or lease property assigned to the Secretary for use in the protection of the public health, including research. To implement both Title V and section 550 of Title 40, the Secretary determines whether an applicant's proposed program of utilization is an approvable public health program, and then recommends to the Administrator of GSA which excess and surplus real property is needed for that approved program in the protection of the public health. 40 U.S.C. 550(d); 45 CFR 12.3(a).

Title V directs HHS to include, as a permissible use in the protection of public health, the furnishing of surplus real property to assist homeless individuals and families. Title V does not prescribe appropriate homeless assistance programs.

HHS concluded in 1992 that long-term housing did not constitute an appropriate public health use of surplus real property under Title V. HHS subsequently adopted the HUD standard, limiting occupancy in Title V's transitional housing programs to 24 months. Until now, HHS has not considered whether the provision of long-term, community-based housing linked with supportive services for persons experiencing homelessness was a permissible public health use.

The Secretary exercises the authority to approve permanent supportive housing programs for Title V, consistent with HHS' mission to protect the public health. There are several critical distinctions between the policy decision in 1992 regarding the use of surplus real property for low-income housing and the current policy revision to allow surplus real property to be used for permanent supportive housing. Low-income housing is defined as subsidized housing opportunities for individuals with low incomes. The provision of low-income housing (*i.e.* the Section 8 Housing Choice Voucher Program) is

under the purview of HUD. HHS, as the nation's public health agency, does not operate low-income housing programs, and does not possess the experience or expertise to complement HUD's mission. The policy revision is intended to reaffirm HHS' 1992 determination that the provision of low-income housing does not constitute an appropriate public health use of surplus real property under Title V. In contrast, we are proposing a permanent supportive housing program that is long-term, affordable, community-based, and linked to supportive services for homeless persons with disabilities.

IV. Policy Revision

HHS has historically been involved in the provision of permanent supportive housing, such as through the Projects for Assistance in Transition from Homelessness (PATH) program that is operated in the Substance Abuse and Mental Health Services Administration (SAMHSA). Given HHS' history of involvement in the health service component of supportive housing programs, there is precedent to suggest that this would be an appropriate public health use of surplus real property under Title V.

Permanent supportive housing is a service model that links housing and services together, without the 24-month time limit traditionally imposed by a transitional housing program. Initial research thus far suggests the effectiveness of permanent supportive housing for individuals with disabilities and those who are chronically homeless. In several studies, this model has been successful at achieving housing stability. For example, placement of homeless people with severe mental illness in permanent supportive housing is associated with reductions in subsequent use of shelters, hospitalizations, and incarcerations (Culhane *et al.*, 2001). Early outcomes in a study of supportive housing with integrated services suggest that these services reduced the use of emergency health care rooms, psychiatric and detoxification programs as well as inpatient care (Corporation for Supportive Housing, 2000). Experimental studies comparing the relative impact of case management and housing resources suggest that long-term housing resources are distinctively effective in reducing homelessness (Rosenheck, 2003).

The policy revision will allow property acquired through the Title V process to be utilized for the development of permanent supportive housing programs that provide permanent housing along with supportive services to homeless people in need of public health assistance and/or services (*e.g.*, substance abuse, mental health, case management, medical care services, and disabled and frail elderly homeless services). This revision would not preclude communities from using surplus property to develop transitional housing programs, emergency shelter programs, or any other homeless assistance program currently approvable by HHS, but simply expands the options available under Title V.

For the purpose of the Title V program, permanent supportive housing means long-term, affordable, community-based housing that is linked to appropriate supportive health and social services (*e.g.*, substance abuse, mental health, case management, medical care services, and disabled and frail elderly services) that enable homeless individuals and homeless families with disabilities to maintain housing. Permanent means there is no time limit to residency, provided a tenant meets conditions of occupancy as established by the program. Affordable means that generally households or tenants pay no more than 30 percent of the occupant's annual income on rent. Eligible populations for this program include homeless individuals with a disability, homeless families with a disabled family member (either parent or child), and homeless frail elderly populations. For the purposes of this program, a disability is defined as a diagnosable substance use disorder, serious mental illness, developmental disability, or chronic physical illness or disability, including the co-occurrence of two or more of these conditions. A disabling condition limits an individual's ability to work or perform one or more activities of daily living. This definition of disability was developed collaboratively by HHS, HUD, and the Department of Veterans Affairs for the Chronic Homelessness Initiative.

The same evaluation criteria outlined in the joint regulation will continue to apply to all applications received for consideration under Title V, including those requesting property to be used for permanent supportive housing. Applicants must fully describe the proposed program, demonstrate how the services to be provided will address the needs of the homeless population to be served, and otherwise comply with the requirements of Title V and the joint regulation.

Existing grantees or lessees interested in changing current programs to include permanent supportive housing are requested to provide a written expression of interest to the Division of Property Management, Administrative Operations Service, Program Support Center, Room 5B–17, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857. Grantees and lessees will be required to submit an amended application.

This policy revision will be instituted on the effective date of this final notice.

Dated: June 7, 2006.

J. Philip VanLandingham,

Deputy Assistant Secretary for Program Support.

[FR Doc. E6–10703 Filed 7–7–06; 8:45 am]

BILLING CODE 4510–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the National Coordinator; American Health Information Community Biosurveillance Data Steering Group Meeting

ACTION: Announcement of meeting.

SUMMARY: This notice announces the first meeting of the American Health Information Community Biosurveillance Data Steering Group in accordance with the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., App.)

DATES: July 7, 2006 from 10 a.m. to 2 p.m.

ADDRESSES: Mary C. Switzer Building (330 C Street, SW., Washington, DC 20201), Conference Room 4090.

FOR FURTHER INFORMATION CONTACT: *http://www.hhs.gov/healthit/ahic./html.*

SUPPLEMENTARY INFORMATION: The Biosurveillance Data Steering Group must convene in early July 2006 in advance of the final deliverable from the Health Information Technology Standards Panel related to the Biosurveillance Use Case.

The meeting will be available via Internet access. Go to *http://www.hhs.gov/healthit/ahic.html* for additional information on the meeting.

Judith Sparrow,

Director, American Health Information Community, Office of Programs and Coordination, Office of the National Coordinator.

[FR Doc. 06–6104 Filed 7–6–06; 8:45 am]

BILLING CODE 4150–24–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Office of Resources and Technology, Statement of Organization, Functions, and Delegations of Authority

Part A, Office of the Secretary, Statement of Organizations, Functions and Delegations of Authority for the Department of Health and Human Services (HHS) is being amended at Chapter AM, ''Office of Budget, Technology and Finance (OBTF),'' which was last amended at 70 FR 42321, dated July 22, 2005. This amendment will retitle, Chapter AM, ''Office of Budget, Technology and Finance,'' as the Office of Resources and Technology; and realign the functions of Chapter AMS, ''Office of Finance,'' and Chapter AMT, ''Office of Grants.'' The changes are as follows:

Under Chapter AM, ''Office of the Assistant Secretary for Budget, Technology and Finance,'' make the following changes:

A. Retitle Chapter AM, ''Office of the Budget, Technology and Finance (OBTF),'' as the ''Office of Resources and Technology (ORT),'' and the ''Assistant Secretary for Budget, Technology and Finance,'' as the ''Assistant Secretary for Resources and Technology (ASRT)''; and change all references within HHS of OBTF to read ORT, and of ASBTF to read ASRT.

B. Under Section AM.20 Functions, make the following changes:

1. Under paragraph D, ''Office of Finance (AMS),'' delete in its entirety and replace with the following:

D. Chapter AMS, Office of Finance (AMS)

Section AMS.00 Mission. The Office of Finance is headed by the Deputy Assistant Secretary for Finance, who is also the Deputy Chief Financial Officer. The Office of Finance advises and supports the Secretary and the Assistant Secretary for Resources and Technology/CFO on all aspects of financial activities to accomplish departmental goals and program objectives. The mission of the office as directed by the Assistant Secretary for Resources and Technology is to: (1) Oversee the design and implementation of a unified financial management system (UFMS) for the Department (the UFMS is an umbrella system for the Department of which the Health Care Integrated General Ledger System (HIGLAS) at the Center for Medicare and Medicaid Services (CMS) and the National Institutes of Health Business System (NBS) are significant parts); (2) coordinate CFO activities and the preparation of reports throughout HHS, including the audited financial statements and the annual Performance and Accountability Report (PAR) for submission to the OMB and Congress; (3) participate in the clearance/approval process for program information systems that provide financial and/or program performance data which are used in financial statements in coordination with other ORT components; (4) provide advice to the ASRT/CFO and recommend approval of the job descriptions, skills requirements and selection of OPDIV CFOs; (5) provide advice to the ASRT/CFO who participates with each OPDIV Head in the annual performance plan/evaluation of the OPDIV CFOs; (6) provide advice to the ASRT/CFO on the qualifications, recruitment, performance, training and retention of all financial management personnel; (7) serve as the Department liaison with the Office of Management and Budget (OMB), Department of the Treasury, the General Services Administration (GSA) and other Federal agencies; (8) develop and maintain Departmental finance and accounting standards; (9) resolve findings involving grantee financial/management systems; (10) ensure compliance with the Departmental and government-wide reporting requirements of Section 2 and Section 4 of the Federal Managers' Financial Integrity Act (FMFIA) and the revised OMB Circular A–123, including requirements for an annual assurance on Internal Controls Over Financial Reporting (ICOFR); (11) establish Department policy for the resolution of findings included in Office of Inspector General (OIG) reports and audits; and (12) oversee other activities to improve financial management throughout the Department.

Section AMS.10 Organization. The Office of Finance (OF) is headed by the Deputy Assistant Secretary for Finance (DASF), who is also the Deputy Chief Financial Officer, and reports to the Assistant Secretary for Resources and Technology/Chief Financial Officer (CFO). The Office includes the following:

- Immediate Office (AMS)
- Office of Financial Policy and Reporting (AMSI)
- Office of Program Management and Systems Policy (AMS2)

Section AMS.20 Functions

1. *Immediate Office (AMS).* The Immediate Office is responsible for support and coordination of the Office of Finance components in their management of the areas listed under section AMS.00 Mission above, especially for ensuring compliance with the Departmental reporting requirements of the Federal Managers' Financial Integrity Act (FMFIA) as Departmental FMFIA Coordinator. In addition, the Immediate Office recommends ASRT/CFO approval of the job description and skill requirements for OPDIV CFOs, advises the ASRT/CFO on the selection of OPDIV CFOs; and advises the ASRT/CFO regarding the annual performance plan/evaluation of each OPDIV CFO. The office also provides guidance on the qualifications, recruitment, training and retention of all financial management personnel.

2. *Office of Financial Policy and Reporting (AMS1).* The Office of Financial Policy and Reporting (OFPR) consists of:

- Division of Financial Management Policy (AMS11)
- Division of Financial Statements and Audit (AMS12)

a. Division of Financial Management Policy (AMS11). The Division of Financial Management Policy (DFMP):

(1) Ensures that proper internal controls are implemented and maintained under OMB Circular A–123, Management's Responsibility for Internal Control;

(2) Coordinates with the OPDIVs in the preparation of the corrective action plan (CAP), which is submitted quarterly to OMB and reflects the material weaknesses and reportable conditions from the annual CFO audit and the Federal Managers' Financial Integrity Act (FMFIA) report;

(3) Develops Department-wide policies, procedures, and standards for financial management areas including cash management, credit management, debt management, payment and disbursement activities and functions, and promulgates these and related government-wide financial management requirements through the Departmental Accounting Manual system;

(4) Establishes a financial management planning process for the development of strategic and tactical plans, and provides guidance and financial management indicators that enable the ASRT/CFO to evaluate the financial management programs and activities of the Department;

(5) Provides support to the OPDIV CFOs for financial planning and improvement initiatives;

(6) Serves as principal staff advisor on financial management policy matters to the Office of Finance;

(7) Maintains liaison with OMB, the Treasury, the GSA and other agencies on financial management policy matters;

(8) Prepares, analyzes, coordinates and assesses financial data reflecting financial, accounting and performance information of the Departmental financial activities;

(9) Recommends policy and maintains a system for tracking and improving cash and credit management and debt collection performance throughout the Department;

(10) Prepares the annual HHS report on CFO activities as guided by the DASF/Deputy CFO.

b. Division of Financial Statements and Audit (AMS12): The Division of Financial Statements and Audits:

(1) Oversees the preparation and submission of quarterly and annual consolidated financial statements for the Departments;

(2) Acts as the principal contact with the OIG in planning the annual financial statement audit strategy under the CFO Act and the 1994 amendments under the Government Management Reform Act (GMRA);

(3) Reviews and interprets OMB, GAO, Treasury and Federal Accounting Standards Board (FASAB) guidance related to government wide accounting policy and standards and develops the Department's policy for implementation of these requirements and assures that policies and procedures are in accordance with internal control and reporting standards of financial management activities;

(4) Develops uniform business rules, data standards and accounting policy and procedures in support of new financial system implementations. Ensures the development of ongoing accounting policy that further supports the consistent development and implementation of these systems;

(5) Provides advice an assistance to OPDIVs and STAFFDIVs on financial accounting and related fiscal matters, and advises the DASF on such matters as they relate to financial system implementations;

(6) Maintains liaison with OMB, the Treasury, and other agencies on accounting, financial policy and fiscal matters;

(7) Maintains the Departmental Accounting Manual (DAM) which is the official accounting standard for recording and reporting accounting transactions;

(8) Provides advice and assistance to OPDIVs and STAFFDIVs on financial accounting and related fiscal matters, government-wide accounting standards and serves as principal advisor to the DASF as it relates to financial statement preparation, audit and financial reporting.

3. *Office of Program Management and Systems Policy (AMS2).* The Office of Program Management and Systems Policy (OPMSP) has the following components:

- Program Management Office (AMS21)
- Division of Systems Policy, Payment Integrity and Audit Resolution (AMS22)

a. Program Management Office (AMS21): The Program Management Office (PMO) is responsible for overseeing the design and implementation of enterprise financial management systems, with a current priority on the unified financial management system (UFMS) consistent with the Secretary's June 2001 directive. The system consists of two major components: the Healthcare Integrated General Ledger Accounting System (HIGLAS) at the Centers for Medicare and Medicaid Services (CMS) and a system for the rest of the Department. The office's responsibilities include:

(1) Serving as a focal point for (1) overseeing the design, development, and implementation of the UFMS and the development of life-cycle and budgetary plans; (2) monitoring the milestones and schedules as well as budget expenditures; and (3) the mediation and coordination of activities throughout all levels of HHS;

(2) Ensuring that the UFMS complies with applicable Federal accounting concepts and standards, as well as HHS accounting policies and procedures;

(3) Ensuring that business requirements are met, the future direction of the initiative is consistent with HHS planning, and the status of the project is appropriately communicated to internal and external organizations;

(4) Overseeing a comprehensive program of change management that includes addressing Departmental communication, training plans and human resource issues;

(5) Coordinating with workgroups to maximize the input from the cross-functional areas of HHS into the implementation process; and

(6) Overseeing risk management plans to ensure that risk to the program are identified and effective mitigation strategies developed.

b. Division of Systems Policy, Payment Integrity, and Audit Resolution (AMS22). The Division is responsible for overseeing the financial systems policy, payment integrity and audit resolution functions:

(1) The financial system policy function oversees Department-wide financial systems policy development and implementation for HHS financial and mixed financial systems for adherence to government-wide and Departmental financial systems policy and standards; oversees the Department's compliance with the Federal Financial Management Improvement Act of 1996 and Section 4 of the Federal Managers' Financial Integrity Act; and helps ensure the financial accountability for these systems in conjunction with the HHS Office of Chief Information Officer. This includes the following functions:

(a) Develops Department-wide policies and standards for financial and mixed financial systems;

(b) Provides advice and serves as the focal point with OMB, Treasury and other Federal control agencies on financial systems compliance matters;

(c) Provides for the establishment of Department-wide financial definitions and data structures;

(d) Provides for the administration of a data integrity and quality control program to ensure compliance with applicable Federal directives, Departmental financial systems policy and automated financial data exchange requirements;

(e) Manages the Capital Planning Investment Control (CPIC) process and the OMB Exhibit 300 business case development and review process for IT systems including financial management systems throughout HHS in support of the Department's Information Technology Investment Review Board (ITIRB);

(f) Oversees and monitors existing Department-wide and component accounting and financial management systems;

(g) Advises the DASF on financial systems related matters in collaboration with the Office of Financial Policy and Reporting; and

(2) The payment integrity function oversees the Department's improper payment reduction initiatives which include recovery auditing, program risk assessments, estimating and reducing improper payments for high risk programs and reporting to OMB, Congress, and others on these estimates and the Department related actions. This includes:

(a) Providing analyses of high risk programs and improper payment identification strategies and formulating recommendations on best approaches to meeting the requirements of the Improper Payments Information Act of 2002 (IPIA) and other related legislation, regulation and policy;

(b) Identifying improvements to the HHS Risk Assessment Model and providing assistance to the OPDIVs in completing required IPIA program risk

assessments, and addressing issues as they arise about the appropriateness of risk assessment conclusions;

(c) Preparing reports, presentations and briefings for the Department's top management, OPDIVs, OMB and other organizations, on the improper payment initiative. This includes preparing the Appendix ''Information on HHS Improper Payment and Recovery Auditing Initiative,'' which is included in the Department's annual Performance and Accountability Report (PAR).

(3) The audit resolution function provides leadership in resolving crosscutting audit findings. It performs the following functions:

(a) Reviews and resolves audit findings pertaining to monetary and/or systemic findings of grantee and contractor organizations affecting the programs of more than one Operating or Staff Division or Federal agencies. Conducts or arranges for additional reviews as needed;

(b) Coordinates, where necessary, with other affected Federal agencies to establish a uniform Federal position on the actions needed to be taken and negotiates resolution on behalf of all Federal Departments and agencies;

(c) Makes recommendations to the Secretary, the ASRT and other officials on safeguards or other actions against a grantee or contractor, where the organization is unwilling or unable to correct serious deficiencies in a timely manner as deemed necessary;

(d) Provides technical assistance to grantees, contractors, and other Operating and Staff Divisions related to the resolution of findings contained in audits of HHS awardees and financial management of grants and contracts;

(e) Establishes and monitors policy regarding audit issuance, follow-up and resolution for the Department in support of the function of the HHS audit follow-up official as required by OMB Circular A–50;

(f) Oversees the submission of required grantee audit reports;

(g) Coordinates status of final action on OS audits with the ASRT Office of Budget; and

(h) Prepares the Management Report on Final Action for the Department's annual Performance and Accountability Report.

2. Under paragraph E, ''Office of Grant (AMT),'' delete in its entirety and replace with the following:

E. Chapter AMT, Office of Grants (AMT)

Section AMT.00 Mission. The Office of Grants (OG) provides functional management directions in the areas of grants policy, grants oversight and evaluation, electronic grants, and grants streamlining. Provides Department-wide leadership in these areas through policy development, oversight and training. Provides Departmental and government-wide leadership on PL 106–107 implementation, Electronic Grants, and other HHS-led initiatives. Represents the Department in dealing with OMB, GSA and other Federal agencies in the areas of mandatory and discretionary grants, and electronic grants. Fosters creativity, collaboration, consolidation, and innovation in the administration of grants functions through the Department.

Section AMT.10 Organization. The Office of Grants (OG) is headed by a Deputy Assistant Secretary for Grants who reports directly to the Assistant Secretary Resources and Technology, and consists of the following components:

- Immediate Office of Grants (AMT)
- Office of Grants Policy, Oversight and Evaluation (AMT1)
- Office of Grants Systems Modernization (AMT2)

Section AMT.20 Functions

1. Immediate Office of Grants (AMT). The Immediate Office of Grants provides leadership, policy, and guidance and supervision, as well as coordinating long- and short-range planning to constituent organizations. The office supports the government-wide electronic grants initiative, including the outreach to grantors and grantees efforts, and interface with OMB, Federal CIO Council, and HHS leadership on the Grants.gov systems. Also, provides technical assistance to the Operating Divisions and evaluates effectiveness of their grant programs, including the development of performance standards and grant processing systems.

2. *Office of Grants Policy, Oversight and Evaluation (AMT1).* The Office of Grants Policy, Oversight and Evaluation (OGPOE) reports to the Deputy Assistant Secretary for Grants, and:

a. Formulates Department-wide grants policies governing the management of grants throughout the Department; establishes uniform administrative rules; and provides oversight and review.

b. Provides leadership in the areas of managing cost policy and has functional responsibility for cost principles and Department-wide cost policies and procedures affecting grants and contracts. Serves as the Departmental liaison and maintains working relationship with OMB and other Federal agencies in the development of government-wide cost principles; maintains similar relationships with associations of States, universities and other grantee and contractor organizations. Upon request, reviews and approves accounting or other systems developed by grantees and contractors to meet Federal cost principle requirements.

c. Develops HHS-wide and Government-wide grants management policy for Federal agencies, OPDIVs and STAFFDIVs awarding grants.

d. Develops new or improved Department-wide grant policy, which brings the Department to and maintains it at the cutting edge of new ideas in the grants management profession. Reviews trends in the field in both public and private sectors, articulates new concepts and creative adaptation of others' pioneering efforts, tests new approaches in a systematic manner, with key offices in Government-wide policy organizations and HHS components, develops and implements HHS grants management regulations, and publishes new policies and modifications in the *HHS Grants Policy Directives (GPDs)*, including all directives necessary to implement new intergovernmental and HHS policies.

e. Implements requirements in the Federal Grant and Cooperative Agreement Act, the Federal Financial Assistance Management Improvement Act, OMB Circulars related to grants management, and other relevant legislation and Government-wide policy. Coordinates their implementation by the OPDIVs and STAFFDIVs, and provides technical assistance and policy interpretations to the OPDIVs and STAFFDIVs.

f. Assists in the preparation of HHS and Government-wide positions on proposed legislation or proposed Government-wide policies concerning grants. Responds to correspondence and inquiries from State and local government officials, grantees and stakeholders.

g. Develops and manages the HHS grants evaluation and oversight procedures to ensure compliance with grants policy and to assure that the policies, business practices, and actual performance of OPDIV and STAFFDIV's grants management offices are performed efficiently, and the government's legal and financial interests are protected. Develops Departmental requirements and criteria for performance of functions and creates review evaluation models, which can be adapted by the OPDIVs and STAFFDIVs for self-evaluation. Evaluates the adequacy of reviews and assesses the completeness or prognosis for success of action plans. Aggregates findings from a

variety of sources to identify patterns, e.g., analyzes evaluation and oversight reports from internal HHS sources and from external sources such as GAO to identify trends/patterns and problem areas for the purpose of identifying alternative approaches.

h. Represents the Department in interagency grants management activities. Provides counsel and direction on OMB Circulars, GAO reports, and OIG reports.

i. Leads the Departmental grants community through the Executive Committee on Grants Administration Policy (ECGAP), made up of the senior grants managers in the OPDIV/ and STAFFDIVs, and manages the design and implementation of HHS grants management conferences to provide state-of-the-art information to Departmental officials.

j. Develops a strategic management approach to career development for grants management professionals both within the Department and Government-wide. Takes the lead among senior grants management officials from major agencies participating on the HHS Career Services Board to define and update a competency-based training model, certification model and career development system for application Department-wide. Within a career management approach, develops and keeps current the training and development program, which meets the unique policies and needs of HHS, and produces a fully certified workforce among HHS grants management professionals. Ensures the development of comprehensive evaluation procedures to guarantee not only complete substantive information, but also full and appropriate use of state-of-the-art adult learning technologies. Negotiates with senior officials in other Departments to manage cross-servicing agreements for them to access HHS grants management training and development models and training and to develop tailored approaches to meet their unique needs.

k. Establishes approach and methodology to conduct evaluations to assess the effectiveness of the grants awarded and the grantees receiving the awards, including the design of overall plans and strategies for the projects in order to meet mission or program goals, requirements and time frames, to support results-based management of grants.

l. Coordinates the review of OPDIV/ STAFFIDV grant announcements policies to ensure consistency with the Secretary and the Administration's Priorities and Initiatives, in addition for compliance with Department-wide grants policies and grant regulations.

m. Serves as the Department's liaison in the area of grants and maintains working relationships with OMB, GSA and other Federal agencies to coordinate and assist in the development of policy.

3. *Office of Grants Systems Modernization (ATM2)* The Office of Grants Systems Modernization (OGSM) reports to the Deputy Assistant Secretary for Grants, and consists of the following components:

- Grants.gov Program Management Division (AMT21)
- Division of Grants Streamlining Initiative (AMT22)
- Division of Grants Management Systems (AMT23)

a. Grants.gov Program Management Division (AMT21): The Grants.gov Program Management Division (GPMD) provides leadership to federal and non-federal members of the Grant Community. The GPMD is responsible for the continued enhancement and development of a common, unified Web site and the accompanying business processes for ''Finding'' and ''Applying'' for government-wide grant opportunities. The division reports to the Director, Office of Grants Systems Modernization, and:

(1) Manage and collects the Grants.gov fee-for-service contributors from the 26 grant-making agencies utilizing a Memorandum of Understanding (MOU) and supports the agencies through Service Level Agreements.

(2) Serves as a liaison to ensure coordination with OMB, Federal CIO Council, Grants Policy Committee and HHS leadership and other oversight organizations on the government-wide electronic grants initiative.

(3) Enable the government to meet many of the streamlining activities required by Public Law 106–107.

(4) Monitors Grants.gov milestones established with OMB to ensure they are met within cost and schedule parameters including HHS pass back re: E-Authentication Security Assertion Markup Language (SAML), multiple credential providers.

(5) Coordinates and promotes the use of other government-wide initiatives in conjunction with the Grants.gov initiative (e.g., E-Authentication, Central Contractor Registration (CCR)).

(6) Prepares the OMB Exhibit 300 and Grants.gov Business case.

(7) Formulates government-wide policy governing the Grants.gov. Find and Apply functions and coordination with the PL 106–107 PMO and Grants Policy Committee of the Counsel of the Chief Financial Officers.

(8) Manages the clearance and revision of government-wide grant forms.

(9) Monitors the adoption of government-wide grant policies and procedures as they affect Grants.gov to ensure compliance.

(10) Manages and provides oversight of the Grants.gov initiative; conducts and coordinates outreach and training for grants management professionals, grantees and grantors.

b. Division of Grants Streamlining Initiative (AMT22): This Division, established within HHS as the OMB-designated lead agency for implementation of Public Law 106–107, coordinates and provides program management support to the Work Groups and other interagency groups implementing Public Law 106–107. The Federal Financial Assistance Management Improvement Act of 1999, also known as Public Law 106–107, is the statute that underlies the agencies' efforts to streamline and simplify the grants and cooperative agreements administrative process. The Public Law 106–107 PMO is under the oversight of the Grants Executive Board and reports to the Director, Office of Grants Systems Modernization.

(1) Coordinate PMO.

(2) Establish and maintain business processes for Public Law 106–107 work product development, approval, agency vetting, public comment, public comment reconciliation and restructuring of product and final pass off to OMB, the **Federal Register,** and Grants.gov (when applicable).

(3) Manage the Public Law 106–107 funds, budget (justification) and expenditures.

(4) Collect data and conduct analysis of data from public comment.

(5) Maintain project milestones/ deliverable dates (status report).

(6) Create reports for GAO, establish the baseline model of the Annual Public Law 106–107 Congressional Report, tracking 26 Federal Agency submission of their Annual Public Law 106–107 Agency Specific Report to Congress.

(7) Maintain a development/content of the Public Law 106–107 Web site.

c. Division of Grants Management Systems (AMT23): This Division plans, directs and coordinates the activities of the OG with respect to implementation of all electronic grants initiatives, such as: Grants.gov, Tracking Accountability in Government Grants Systems (TAGGS), One-HHS Grants Management Systems Consolidation, Government-wide Grants Management Line of Business, OG Internet/Intranet sites, for the Department. Represents the Department or the Office of Grants on

matters of electronic assistance administration policy in dealing with recipients, OMB, other Federal agencies, and the public in general. The Division reports to the Director, Office of Grants Systems Modernization.

II. Continuation of Policy: Except as inconsistent with this reorganization, all statements of policy and interpretations with respect to the Office of Grants (AMT) and the Office of Finance (AMS) heretofore issued and in effect prior to this reorganization are continued in full force and effect.

III. Delegation of Authority: All delegations and redelegations of authority made to officials and employees of the Office of Grants (AMT) and the Office of Finance (AMS) will continue in them or their successors pending further redelegation, provided they are consistent with this reorganization.

IV. Funds, Personnel and Equipment: Transfer of organizations and functions affected by this reorganization shall be accompanied by direct and support funds, positions, personnel, records, equipment, supplies, and other sources.

Dated: June 30, 2006.

Michael Leavitt,

Secretary, Department of Health and Human Services.

[FR Doc. 06–6067 Filed 7–7–05; 8:45 am]

BILLING CODE 4150–24–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

National Center for Environmental Health/Agency for Toxic Substances and Disease Registry

The Program Peer Review Subcommittee of the Board of Scientific Counselors (BSC), Centers for Disease Control And Prevention (CDC), National Center for Environmental Health/Agency for Toxic Substances and Disease Registry (NCEH/ATSDR): Teleconference.

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), CDC, NCEH/ATSCR announces the following subcommittee meeting:

Name: Program Peer Review Subcommittee (PPRS).

Time and Date: 10 a.m.–12 p.m. eastern daylight savings time, July 24, 2006.

Place: The teleconference will originate at NCEH/ATSDR in Atlanta, Georgia. To participate, dial 877/315–6535 and enter conference code 383520.

Purpose: Under the charge of the BSC, NCEH/ATSDR, the PPRS will provide the BSC, NCEH/ATSDR with advice and recommendations on NCEH/ATSDR program peer review. They will serve the function of organizing, facilitating, and providing a long-term perspective to the conduct of NCEH/ATSDR program peer review.

Matters To Be Discussed: A review of the June 26, 2006 PPRS meeting regarding NCEH/ATSDR Director's priorities and vision for the program peer peview process; a discussion of revised Peer Review Review Questionnaires for Site Specific Activities, October 2006 Review; a review, discussion and finalization of Nominated External Peer Reviewers for Site Specific Activities, October 2006 Review; and a discussion regarding proposed revised Suggested Cross-Cutting Functional Areas for Peer Review. Agenda items are subject to change as priorities dictate.

Supplementary Information: This meeting is scheduled to begin at 10 a.m. eastern daylight savings time. To participate, please dial (877) 315–6535 and enter conference code 383520. Public comment period is scheduled for 11:30–11:40 a.m.

For Further Information Contact: Sandra Malcom, Committee Management Specialist, Office of Science, NCEH/ATSDR, M/S E–28, 1600 Clifton Road, NE., Atlanta, Georgia 30333, telephone 404/498–0622.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities for both CDC and NCEH/ATSDR.

Dated: July 3, 2006.

Alvin Hall,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. E6–10706 Filed 7–7–06; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Comment Request; Proposed Projects

Title: Procedures to Use the Child Care and Development Fund (CCDF) for Construction or Major Renovation.

OMB No.: 0970–0160.

Description: The Child Care and Development Block Grant Act, as amended, allows Indian Tribes to use the CCDF grant awards for construction and renovation of child care facilities. A Tribal grantee must first request and receive approval from the Administration for Children and Families (ACF) before using CCDF funds for construction or major renovation. This information collection contains the statutorily mandated uniform procedures for the solicitation and consideration of requests, including instructions for preparation of environmental assessments in conjunction with the National Environmental Policy Act. The proposed draft procedures update the procedures that were originally issued in August 1997 and last updated in January 2004. Respondents will be CCDF Tribal grantees requesting to use CCDF funds for construction or major renovation.

Respondents: Tribal Child Care Lead Agencies acting on behalf of Tribal Governments.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Construction or Renovation	10	1	20	200

Estimated Total Annual Burden Hours: 200.

In compliance with the requirements of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above. Copies of the proposed collection of information can be obtained and comments may be forwarded by writing to the Administration for Children and Families, Office of Administration, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer. E-mail address: *infocollection@acf.hhs.gov*. All requests should be identified by the title of the information collection.

The Department specifically requests comments on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Dated: July 8, 2006.

Robert Sargis,

Reports Clearance Officer.

[FR Doc. 06–6079 Filed 7–7–06; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Proposed Collection; Comment Request; NIH Leadership Development Programs Evaluation

SUMMARY: In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, for opportunity for public comment on proposed data collection projects, the Office of the Director (OD), National Institutes of Health (NIH) will publish periodic summaries of proposed projects to be submitted to the Office of Management and Budget (OMB) for review and approval.

PROPOSED COLLECTION: *Title:* NIH Leadership Development Programs Evaluation. *Type of Information Collection Request*: NEW. *Need and Use of Information Collection*: This evaluation will focus on Leadership Development Programs that are administered at NIH. These programs are integral components in the NIH Human Capital Strategy, submitted to the HHS/Office of the Secretary. NIH has committed to an evaluation of all leadership development programs as part of the Human Capital Strategy. The overarching purpose of evaluating the NIH Leadership Development Programs is to assess the effectiveness of existing programs as analyzed against the needs of the NIH community. The findings of this study will be used to: (1) Implement recommendations for program: Realignment, modification, retirement, and/or development; (2) assess the investments in the programs as they relate to the NIH Human Capital Strategy and NIH budget priorities; (3) improve communication of the programs and promote awareness throughout the NIH community; (4) identify opportunities for sharing best practices, reducing redundancies, and emphasize trans-NIH and/or IC program impacts; (5) conduct more effective succession planning to strategically optimize the leadership pipeline; and (6) integrate recommendations with the current NIH workforce planning initiative. The findings of this study will be used to ensure that programs meet the NIH Human Capital Strategy goals. *Frequency of Response*: On occasion. *Affected Public*: Individuals. *Types of Respondents*: Past program participants, program managers, officials who have selected both graduates and non-graduates from leadership development programs, and key administrative and scientific leaders across a diverse representation of the NIH's 27 Institutes/Centers. The annual reporting burden is as follows: *Estimated Number of Respondents*: 100; *Estimated Number of Responses per Respondent*: 1; and *Average Burden Hours Per Response*: 1. There are no Capital Costs to report. There are no Operating or Maintenance Costs to report.

Request for Comments: Written comments and/or suggestions from the public and affected agencies should address one or more of the following points: (1) Whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility; (2) The accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) Ways to enhance the quality, utility, and clarity of the information to be collected; and (4) Ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the data collection plans and instruments, contact Debbie Butcher, Acting Director, NIH Training Center, WSDD, OD, NIH, Suite 100, 6120 Executive Blvd., Rockville, MD 20852, or call non-toll-free number 301–435–6755 or E-mail your request, including your address to: *butcherd@od.nih.gov*.

Comments Due Date: Comments regarding this information collection are best assured of having their full effect if received within 60 days of the date of this publication.

Dated: June 28, 2006.

Debbie Butcher,

Acting Director, NIH Training Center, OD, National Institutes of Health.

[FR Doc. E6–10726 Filed 7–7–06; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Toxicology Program (NTP); Liaison and Scientific Review Office; Meeting of the NTP Board of Scientific Counselors Technical Reports Review Subcommittee

AGENCY: National Institute of Environmental Health Sciences (NIEHS), National Institutes of Health (NIH).

ACTION: Meeting announcement and request for comments.

SUMMARY: Pursuant to Public Law 92–463, notice is hereby given of a meeting of the NTP Board of Scientific Counselors Technical Reports Review Subcommittee (TRR Subcommittee). The primary agenda topic is the peer review of the findings and conclusions presented in five draft NTP Technical Reports of rodent toxicology and carcinogenicity studies in genetically modified mice conducted by the NTP (see Preliminary Agenda below). The TRR Subcommittee meeting is open to the public with time scheduled for oral public comment. The NTP also invites written comments on any draft technical report discussed at the meeting. The TRR Subcommittee deliberations on the draft technical reports will be reported to the NTP Board of Scientific Counselors (BSC) at a future date.

DATES: The TRR Subcommittee meeting will be held on August 28, 2006. All individuals who plan to attend are encouraged to register online by August 14, 2006, at the NTP Web site (*http://ntp.niehs.nih.gov/* select ''Calendar of Upcoming Events''). In order to facilitate planning for this meeting, persons wishing to make an oral presentation are asked to notify Dr. Barbara Shane via online registration, phone, or e-mail (see **ADDRESSES** below) by August 14, 2006, and if possible, to send a copy of the statement or talking points at that time. Written comments on the draft reports are also welcome and should also be received by August 14, 2006, to enable

review by the TRR Subcommittee and NTP staff prior to the meeting. Persons needing special assistance, such as sign language interpretation or other reasonable accommodation in order to attend, should contact 919–541–2475 (voice), 919–541–4644 TTY (text telephone), through the Federal TTY Relay System at 800–877–8339, or by e-mail to *niehsoeeo@niehs.nih.gov*. Requests should be made at least 7 days in advance of the event.

ADDRESSES: The TRR Subcommittee meeting will be held in the Rodbell Auditorium, Rall Building at the NIEHS, 111 T. W. Alexander Drive, Research Triangle Park, NC 27709. A copy of the preliminary agenda, committee roster, and any additional information, when available, will be posted on the NTP Web site (*http://ntp.niehs.nih.gov/* select ''Calendar of Upcoming Events'') or provided upon request. Public comments and any other correspondence should be submitted to Dr. Barbara Shane, Executive Secretary for the NTP Board (NTP Liaison and Scientific Review Office, NIEHS, P.O. Box 12233, MD A3–01, Research Triangle Park, NC 27709; telephone: 919–541–4253, fax: 919–541–0295; or e-mail: *shane@niehs.nih.gov*).

SUPPLEMENTARY INFORMATION:

Background

The primary agenda topic is the peer review of the findings and conclusions of five draft NTP Technical Reports of rodent toxicology and carcinogenicity studies conducted by the NTP (see Preliminary Agenda below) in genetically modified mouse models. The TRR Subcommittee will also provide advice to the NTP on the utility of GMM models for cancer hazard identification.

Attendance and Registration

The meeting is scheduled for August 28, 2006, from 8:30 a.m. to adjournment and is open to the public with attendance limited only by the space available. Individuals who plan to attend are encouraged to register online at the NTP website by August 14, 2006, at *http://ntp.niehs.nih.gov/* select ''Advisory Boards and Committees'' to facilitate access to the NIEHS campus. Please note that a photo ID is required to access the NIEHS campus. The NTP is making plans to videocast the meeting through the Internet at *http://www.niehs.nih.gov/external/video.htm.*

Availability of Meeting Materials

A copy of the preliminary agenda, committee roster, and any additional information, when available, will be posted on the NTP Web site (*http://ntp.niehs.nih.gov/* select ''Calendar of Upcoming Events'') or may be requested in hardcopy from the Executive Secretary (see **''ADDRESSES** above). Following the meeting, summary minutes will be prepared and made available on the NTP Web site.

Request for Comments

Public input at this meeting is invited and time is set aside for the presentation of public comments on any draft technical report. Each organization is allowed one time slot per agenda topic. At least 7 minutes will be allotted to each speaker, and if time permits, may be extended to 10 minutes. Registration for oral comments will also be available on-site, although time allowed for presentation by on-site registrants may be less than that for pre-registered speakers and will be determined by the number of persons who register at the meeting.

Persons registering to make oral comments are asked, if possible, to send a copy of their statement to Dr. Shane (see **ADDRESSES** above) by August 14, 2006, to enable review by the TRR Subcommittee and NTP staff prior to the meeting. Written statements can supplement and may expand the oral presentation. If registering on-site and reading from written text, please bring 40 copies of the statement for distribution to the TRR Subcommittee and NTP staff and to supplement the record. Written comments received in response to this notice will be posted on the NTP Web site. Persons submitting written comments should include their name, affiliation, mailing address, phone, fax, e-mail, and sponsoring organization (if any) with the document.

Background Information on the NTP Board of Scientific Counselors

The NTP Board of Scientific Counselors (BSC) is a technical advisory body comprised of scientists from the public and private sectors who provide primary scientific oversight to the overall program and its centers. Specifically, the BSC advises the NTP on matters of scientific program content, both present and future, and conducts periodic review of the program for the purposes of determining and advising on the scientific merit of its activities and their overall scientific quality. The TRR Subcommittee is a standing subcommittee of the BSC. BSC members are selected from recognized authorities knowledgeable in fields such as toxicology, pharmacology, pathology, biochemistry, epidemiology, risk assessment, carcinogenesis, mutagenesis, molecular biology, behavioral toxicology and neurotoxicology, immunotoxicology, reproductive toxicology or teratology, and biostatistics. Its members are invited to serve overlapping terms of up to four years. BSC and TRR Subcommittee meetings are held annually or biannually.

Dated: June 27, 2006.

Samuel H. Wilson,

Deputy Director, National Institute of Environmental Health Sciences and the National Toxicology Program.

Preliminary Agenda; National Toxicology Program (NTP) Board of Scientific Counselors Technical Reports Review Subcommittee Meeting; August 28, 2006; Rodbell Auditorium, Rall Building, National Institute of Environmental Health Sciences, 111 TW Alexander Drive, Research Triangle Park, NC

NTP Technical Reports (TR) Scheduled for Review

- GMM 07: Allyl Bromide (CASNR 106–95–6).
  - Chemical intermediate in the manufacture of polymers, pharmaceuticals, and agricultural products.
- GMM 09: Dicyclohexylcarbodiimide (CASNR 538–75–0).
  - Reagent in the chemical and pharmaceutical industries; stabilizing agent in elastomers, synthetic rubber, and other types of resins.
- GMM 08: Benzene (CASNR 71–43–2).
  - Used in the manufacture of medicinal chemicals, dyes, oil, varnishes, and lacquers.
- GMM 13: Glycidol (CASNR 556–52–5).
  - Stabilizer in the manufacture of vinyl polymers; additive for oil and synthetic hydraulic fluids.
- GMM 12: Phenolphthalein (CASNR 77–09–8).
  - Laboratory reagent; cathartic drug in laxatives.
- The utility of genetically modified models for cancer hazard identification.

[FR Doc. E6–10728 Filed 7–7–06; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Prospective Grant of Exclusive License: (N)-Methanocarba Adenosine Derivative as A3 Receptor Agonists

AGENCY: National Institutes of Health, Public Health Service, HHS.

ACTION: Notice.

SUMMARY: This is notice, in accordance with 35 U.S.C. 209(c)(1) and 37 CFR 404.7(a)(1)(i), that the National Institutes of Health (NIH), Department of Health and Human Services, is contemplating the grant of an exclusive license worldwide to practice the invention embodied in: International Patent Application PCT/US2005/031678 filed September 2, 2005 entitled, ''(N)-Methanocarba Adenosine Derivative as A3 Receptor Agonists'', to Can-Fite BioPharma, Ltd. having a place of business in Petach-Tikva, Israel. The contemplated exclusive license may be limited to an FDA approvable human therapeutic for cancer, autoimmune and other inflammatory diseases. The United States of America is the assignee of the patent rights in this invention.

DATES: Only written comments and/or application for a license which is received by the NIH Office of Technology Transfer on or before September 8, 2006 will be considered.

ADDRESSES: Request for a copy of the patent, inquiries, comments, and other materials relating to the contemplated license should be directed to: Norbert Pontzer, Technology Licensing Specialist, Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, MD 20852–3804; Telephone: 301–435–5502; Facsimile: 301–402–0220; e-mail: *pontzern@mail.nih.gov*.

SUPPLEMENTARY INFORMATION: Researchers have been pursuing compounds that activate or inhibit adenosine A3 receptors because these cell membrane proteins have a wide range of physiological and disease-related effects and are thus considered to be promising drug targets. The adenosine A3 receptors are G-protein-coupled receptors and are found mostly in brain, lung, liver, heart, kidney, and testis. When this receptor is activated moderately, a cytoprotective effect is observed, such as reducing damage to heart cells from lack of oxygen. However, at high levels of stimulation they can cause cell death. Both agonists and antagonists are being tested for therapeutic potential, for example, treatment of cancer, heart conditions, neurological conditions, pain, asthma, inflammation and other immune implications. This invention pertains to highly potent A3 adenosine receptor agonists, pharmaceutical compositions comprising such nucleosides, and a method of use of these nucleosides.

The prospective exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective exclusive license may be granted unless, within 60 days from the date of this published Notice, the NIH receives written evidence and argument that establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

Properly filed competing applications for a license filed in response to this notice will be treated as objections to the contemplated license. Comments and objections submitted in response to this notice will not be made available for public inspection, and, to the extent permitted by law, will not be released under the Freedom of Information Act, 5 U.S.C. 552.

Dated: June 29, 2006.

David R. Sadowski,

Acting Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. E6–10727 Filed 7–7–06; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

Bureau of Customs and Border Protection

[USCBP–2006–0060]

Airport and Seaport Inspections User Fee Advisory Committee

AGENCY: Customs and Border Protection, Department of Homeland Security.

ACTION: Notice of meeting.

SUMMARY: The Customs and Border Protection (''CBP'') Airport and Seaport Inspections User Fee Advisory Committee (''Advisory Committee'') will meet in open session.

DATES: Tuesday, August 22, 2006, 1 p.m. to 4 p.m.

ADDRESSES: The meeting will be held at Conference Room B 1.5–10, Ronald Reagan Building, 1300 Pennsylvania Avenue, NW., Washington, DC.

If you desire to submit comments, they must be submitted by August 8, 2006. Comments must be identified by USCBP–2006–0060 and may be submitted by one of the following methods:

- Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the instructions for submitting comments.
- E-mail: *Roberto.M.Williams@dhs.gov*. Include docket number in the subject line of the message.
- Mail: Mr. Roberto Williams, Cost Management Division, 1300 Pennsylvania Avenue, NW., Suite 4.5A, Customs and Border Protection, Department of Homeland Security, Washington, DC 20229.
- Facsimile: 202–344–1818.

Instructions: All submissions received must include the words ''Department of Homeland Security'' and the docket number for this action. Comments received will be posted without alteration at *http://www.regulations.gov*, including any personal information provided.

Docket: For access to the docket to read background documents or comments received by the CBP Advisory Committee, go to *http://www.regulations.gov*.

FOR FURTHER INFORMATION CONTACT: Mr. Roberto Williams, Cost Management Division, 1300 Pennsylvania Avenue, NW., Suite 4.5A, Customs and Border Protection, Department of Homeland Security, Washington, DC 20229, telephone 202–344–1101; facsimile, 202–344–1818; e-mail: *Roberto.M.Williams@dhs.gov*.

SUPPLEMENTARY INFORMATION: The fourth meeting of the CBP Advisory Committee will be held at the date, time and location specified above. This notice also announces the expected agenda for the meeting (see below).

The Advisory Committee was established pursuant to section 286(k) of the Immigration and Nationality Act (INA), codified at title 8 U.S.C. 1356(k), which references the Federal Advisory Committee Act (5 U.S.C. App. 1 *et seq.*). With the merger of the Immigration and Naturalization Service into the Department of Homeland Security, the Advisory Committee's responsibilities were transferred from the Attorney General to the Commissioner of CBP pursuant to section 1512(d) of the Homeland Security Act of 2002.

The Advisory Committee held its first meeting under the direction of CBP on October 22, 2003 (see 68 FR 56301, September 30, 2003). Among other things, the committee is tasked with advising the CBP Commissioner on issues related to CBP inspection services. This advice includes, but is not limited to, the level and the appropriateness of the following fees assessed for CBP services: the immigration user fee pursuant to 8 U.S.C. 1356(d), the customs inspection user fee pursuant to 19 U.S.C. 58c(a)(5), and the agriculture inspection user fee pursuant to 21 U.S.C 136a.

This meeting is open to the public. Public participation in the deliberations is welcome; however, please note that matters outside of the scope of this committee will not be discussed.

Since seating is limited, all persons attending this meeting must provide notice, preferably by close of business Tuesday, August 8, 2006, to Mr. Roberto Williams, Cost Management Division, 1300 Pennsylvania Avenue, NW., Suite 4.5A, Customs and Border Protection, Department of Homeland Security, Washington, DC 20229, telephone 202–344–1101; facsimile 202–344–1818.

For information on facilities or services for individuals with disabilities or to request special assistance at the meeting, contact Mr. Roberto Williams as soon as possible.

Draft Agenda

1. Introduction of Committee members and CBP Personnel.
2. Discussion of activities since last meeting held on November 30, 2005.
3. Discussion of operational initiatives and programs.
4. Discussion of workload issues and traffic trends.
5. Discussion of funding levels.
6. Discussion of user fee initiatives.
7. Discussion of specific concerns and questions of Committee members.
8. Discussion of relevant written statements submitted in advance by members of the public.
9. Discussion of Committee administrative issues and scheduling of next meeting.
10. Adjourn.

Dated: July 5, 2006.

Richard L. Balaban,

Assistant Commissioner, Office of Finance, Customs and Border Protection.

[FR Doc. E6–10751 Filed 7–7–06; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1643–DR]

New Hampshire; Amendment No. 3 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, Department of Homeland Security.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of New Hampshire (FEMA–1643–DR), dated May 25, 2006, and related determinations.

EFFECTIVE DATE: June 21, 2006.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of New Hampshire is hereby amended to include the following area among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of May 25, 2006:

Grafton County for Public Assistance.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund Program; 97.032, Crisis Counseling; 97.033, Disaster Legal Services Program; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance; 97.048, Individuals and Households Housing; 97.049, Individuals and Households Disaster Housing Operations; 97.050 Individuals and Households Program—Other Needs, 97.036, Public Assistance Grants; 97.039, Hazard Mitigation Grant Program.)

R. David Paulison,

Under Secretary for Federal Emergency Management and Director of FEMA.

[FR Doc. E6–10704 Filed 7–7–06; 8:45 am]

BILLING CODE 6718–10–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Long Lake National Wildlife Refuge Complex, Moffit, ND

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability.

SUMMARY: The U.S. Fish and Wildlife Service (Service) announces that the Draft Comprehensive Conservation Plan (CCP) and Environmental Assessment (EA) for the Long Lake National Wildlife Refuge Complex (Complex) is available. This Draft CCP/EA describes how the Service intends to manage this Complex for the next 15 years.

DATES: This Draft CCP/EA is available to the public for a 30-day review and comment period from the date of publication of this notice in the **Federal Register**. Submit comments to the addresses listed below.

ADDRESSES: Please provide written comments to Bernardo Garza, Planning Team Leader, Division of Planning, Branch of Comprehensive Conservation Planning, Mountain-Prairie Region, P.O. Box 25486, Denver Federal Center, Denver, Colorado 80225–0486, or electronically to *bernardo_garza@fws.gov*. A copy of the CCP may be obtained by writing to U.S. Fish and Wildlife Service, Division of Refuge Planning, 134 Union Boulevard, Suite 300, Lakewood, CO 80228; or downloaded from *http://mountain-prairie.fws.gov/planning*.

FOR FURTHER INFORMATION CONTACT: Bernardo Garza at 303–236–4377; fax 303–236–4792; or e-mail: *bernardo_garza@fws.gov*.

SUPPLEMENTARY INFORMATION: This Complex includes Long Lake National Wildlife Refuge (NWR), Slade NWR, Florence Lake NWR and the Long Lake Wetland Management District (WMD), as well as six easement refuges that have already been covered in a separate CCP.

Long Lake NWR was established on February 25, 1932, by President Herbert Hoover through Executive Order No. 5808 ''* * * as a refuge and breeding ground for migratory birds and wild animals * * *''; and under the Migratory Bird Conservation Act ''* * * for use as an inviolate sanctuary, or for any other management purpose, for migratory birds.'' This Refuge encompasses 22,310 acres consisting of approximately 15,000 acres of brackish to saline marsh and lake; 1,000 acres of other wetlands; and approximately 6,000 acres of tame and native grassland, woodland, and cropland. This Refuge serves as an important staging area for migrating sandhill cranes, Canada geese and other waterfowl, shorebirds, and other migratory birds. Endangered whooping cranes often utilize Refuge marshes during spring and fall migrations.

Slade NWR was established under the authority of the Migratory Bird Conservation Act on October 10, 1944 ''* * * for use as an inviolate sanctuary, or for any other management purpose, for migratory birds.'' This Refuge occupies 3,000 acres of gently rolling prairie dotted by lakes and marshes formed by glacial action. Habitat centers around five semi-permanent lakes and marshes, and fifteen pothole areas totalling over 900 acres of wetlands.

Florence Lake NWR was established on May 10, 1939, by President Franklin D. Roosevelt through Executive Order No. 8119 ''* * * as a refuge and breeding ground for migratory birds and other wildlife * * *''; and under the authority of the Migratory Bird Conservation Act ''* * * for use as an inviolate sanctuary, or for any other management purpose, for migratory birds.'' This Refuge is located in northern Burleigh County, approximately 45 miles northwest of Long Lake. The fee portion of the Refuge consists of 976.4 acres of native grassland; 201.9 acres of tame grass; 110.9 acres of seeded native grass; 163.2 acres of wetland; and 16 acres of

woodland. It serves as an important migratory bird production area and migrational area.

Long Lake WMD was started as part of the Small Wetlands Acquisition Program in the 1950s to save wetlands from various threats, particularly draining. The passage of Public Law 85–585, in August of 1958, amended the Migratory Bird Hunting and Conservation Stamp Act (Duck Stamp Act) of 1934, allowing for acquisition of Waterfowl Production Areas and Easements for Waterfowl Management Rights. This WMD was established with the purpose ''* * * to assure the long-term viability of the breeding waterfowl population and production through the acquisition and management of Waterfowl Production Areas, while considering the needs of other migratory birds, threatened and endangered species and other wildlife.'' Other purposes for this WMD include those under the Migratory Bird Hunting Stamp Act ''* * * as Waterfowl Production Areas subject to all provisions of the Migratory Bird Conservation Act * * * except the inviolate sanctuary provisions * * *''; the Migratory Bird Conservation Act ''* * * for any other management purposes, for migratory birds''; and the Consolidated Farm and Rural Development Act ''* * * for conservation purposes.''

This Draft CCP/EA identifies and evaluates four alternatives for managing the NWRs and WMD for the next 15 years. Alternative A, the No Action alternative, would have management activities conducted by the Service remaining at current levels. The Service would not develop any new management, restoration, or education programs at the Complex. Current habitat and wildlife practices benefitting migratory species and other wildlife would not be expanded or changed. The staff would perform limited, issue-driven research and only monitor long-term vegetation change. No new funding or staff levels would occur, and programs would follow the same direction, emphasis and intensity as they presently do. The staff would continue to manage the WMD through monitoring and enforcing easements.

Alternative B seeks to return to a more natural hydrology by removing water control structures as well as returning all upland habitats to native vegetation. Alternative B restricts public uses and associated infrastructure (e.g., trails, roads, signs) to a ''primitive type'' of experience. This alternative seeks to protect and/or restore additional native habitats and to develop partnerships while encouraging research that provides the necessary knowledge and data to guide habitat management decisions and activities.

Alternative C seeks to maintain existing and develop new water control structures. This alternative targets habitat development to specific resource needs, and it maximizes the expansion and development of public use programs and facilities, and the stocking of game fish in feasible locations. This alternative emphasizes protection and/or restoration of additional wildlife habitats and the development of partnerships as well as encourages research that provides the necessary knowledge and data to guide habitat management decisions and activities.

Alternative D, the Proposed Action, seeks to expand the scope and level of efforts of the current management of habitats by incorporating adaptive resource management. The Proposed Action seeks to improve and develop public use facilities to maximize existing and potential wildlife-dependent priority public use opportunities when they are compatible with refuge purposes. This alternative calls for the development of partnerships and the encouragement of research that provides the necessary knowledge and data to guide habitat management decisions and activities, and to protect and/or restore additional wildlife habitats.

All four alternatives would continue to protect federally listed species at current levels.

The proposed action was selected because it best meets the purposes and goals of the Complex, as well as the goals of the National Wildlife Refuge System. The proposed action will also benefit federally listed species, shore birds, migrating and nesting waterfowl, and neotropical migrants, as well as enhanced capabilities to deal with botulism episodes. Environmental education and partnerships will result in improved wildlife-dependent recreational opportunities. Cultural and historical resources as well as federally listed species will be protected.

Opportunities for public input will also be provided at a public meeting to be scheduled soon. Exact dates and times for these public meetings are yet to be determined, but will be announced via local media and a newsletter. All information provided voluntarily by mail, phone, or at public meetings (*e.g.,* names, addresses, letters of comment, input recorded during meetings) becomes part of the official public record. If requested under the Freedom of Information Act by a private citizen or organization, the Service may provide copies of such information. The environmental review of this project will be conducted in accordance with the requirements of the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 *et seq.*); NEPA Regulations (40 CFR 1500–1508); other appropriate Federal laws and regulations; Executive Order 12996; the National Wildlife Refuge System Improvement Act of 1997; and Service policies and procedures for compliance with those laws and regulations.

Dated: May 23, 2006.

James J. Slack,

Deputy Regional Director, Region 6, Denver, CO.

[FR Doc. E6–10705 Filed 7–7–06; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AK–910–02–1410–PG]

Notice of Availability of Proposed East Alaska Resource Management Plan and Final Environmental Impact Statement

AGENCY: Bureau of Land Management, Interior

ACTION: Notice of availability.

SUMMARY: In accordance with the National Environmental Policy Act of 1969 (NEPA, 42 U.S.C. 4321 *et seq.*) and the Federal Land Policy and Management Act of 1976 (FLPMA, 43 U.S.C. 1701 *et seq.*), the Bureau of Land Management (BLM) has prepared a proposed Resource Management Plan/Final Environmental Impact Statement (PRMP/FEIS) for the East Alaska Planning Area.

DATES: The BLM Planning Regulations (43 CFR 1610.5–2) state that any person who participated in the planning process, and has an interest which is or may be adversely affected, may protest BLM's approval or amendment of a RMP. You must file a protest within 30 days of the date that the Environmental Protection Agency publishes their Notice of Availability in the **Federal Register**. Instructions for filing of protests are described in the Dear Reader letter of the Proposed East Alaska RMP/Final EIS and in the **SUPPLEMENTARY INFORMATION** section of this notice.

FOR FURTHER INFORMATION CONTACT: Bruce Rogers, BLM Glennallen Field Office, P.O. Box 147 Glennallen, AK 99588, (907) 822–3217, *brogers@ak.blm.gov*.

SUPPLEMENTARY INFORMATION: The East Alaska RMP planning area covers 7.1

million acres of BLM-administered lands. The Proposed East Alaska RMP/Final EIS focuses on the principles of multiple use and sustained yield as prescribed by Section 202 of the Federal Land Policy and Management Act of 1976 (FLPMA). The Proposed East Alaska RMP/Final EIS considers and analyzes four alternatives, including a No Action and a Preferred Alternative. The alternatives provide for an array of variable levels of commodity production and resource protection and restoration. The alternatives were developed based on extensive public scoping and involvement.

There are seven main issues addressed through this planning process.

Issue 1, Travel Management, addresses management of access, roads, and the use of off-highway vehicles (OHV) for various purposes, including recreation, commercial uses, subsistence activities, and the general enjoyment of public lands while protecting natural and cultural resources.

Issue 2, Recreation, examines how recreation should be managed to provide a diversity of experiences on BLM-managed lands. The document analyzes what measures are necessary to ensure that a diversity of recreational opportunities is maintained and what level of commercial recreational use is appropriate to maintain a diversity of recreational opportunities.

Issue 3, Special Resource Values, focuses on those unique, special values located within the planning area that were identified by resource specialists and the public, and includes discussions on wildlife, fisheries, soil, water, air, vegetation, and consideration of Areas of Critical Environmental Concern (ACECs) to protect special resource values.

Issue 4, Lands and Realty, addresses the need to determine the appropriate mix of lands and realty actions needed to provide a balance between land use and resource protection. Special attention is paid to the Slana settlement area, and the establishment of conditions that would make the area available for disposal while considering the effects of disposal on the social and environmental conditions of the area.

Issue 5, Vegetation Management, examines management to provide for forest health, personal and commercial wood products, fish and wildlife habitat, and the role of fire.

Issue 6, Leasable and Locatable Minerals, addresses the need to determine which areas should be made available for mineral exploration and development.

Issue 7, Subsistence/Social and Economic Conditions, examines the need to maintain and protect subsistence opportunities and resources, as well as how the management actions, guidelines, and allowable uses described under the other issues will affect subsistence opportunities and resources. This discussion also addresses social and economic effects.

The public involvement and collaboration process included 30 public scoping meetings, 17 alternative development meetings, 7 public meetings on the Draft, and meetings with Native and Village Corporations. The State of Alaska is participating in the planning effort as an informal cooperator.

Public Land Order 5150 withdrew land within the planning area to establish the Trans-Alaska Pipeline Utility Corridor. The BLM's preferred alternative is to maintain most of this corridor in Federal ownership, with the exception of 82,500 acres north of Paxson. These 82,500 acres provide less than ten percent of the average annual subsistence harvest taken off of Federal lands.

Alternative B of the Proposed RMP/Final EIS proposes the revocation of Public Land Order 5150. This revocation would allow the conveyance of these lands to the State of Alaska. This possibility raised much controversy with the local community and Native groups as it would eliminate 63% of the land area available for federal subsistence hunting in Game Management Unit 13. Approximately 80% of the harvest in Unit 13 is taken from lands within PLO 5150 because of its location within the migration corridor of the Nelchina Caribou Herd and the ease with which it can be accessed from the Richardson Highway. The Alaska National Interest Lands Conservation Act (ANILCA) section 810 analysis, included as an appendix in the Proposed RMP/Final EIS, concludes that Alternative B has the clear potential to significantly restrict subsistence uses. Seven subsistence hearings were held throughout the planning area to gather public testimony on the impacts of Alternative B on subsistence. BLM hosted a special session of the Southcentral Subsistence Advisory Committee to facilitate the committee hearing testimony and submitting formal comment on the issue before the deadline for public comment.

The Draft RMP/EIS considered four ACECs. A significant percentage of the total comments submitted during the 90-day comment period pertained to ACECs. The Proposed RMP/Final EIS identifies one ACEC for designation, the Bering Glacier Research Natural Area (RNA) which contains 827,000 acres of land. This area encompasses the Bering Glacier and the surrounding glacially influenced landscape. Measures to protect unique ecological values associated with the glacier and glacier forelands include: (1) OHVs limited to designated trails; (2) new road and airstrip construction would be permitted only if consistent with the protection of the values identified; (3) withdrawals prohibiting mineral entry or leasing would be maintained in the western two-thirds of the area; (4) no FLPMA 302 leases or permits unless associated with research activities; (5) visitor use limits developed for Special Recreation Permits; and (6) no heli-recreation activities would be permitted.

All comments received on the plan were systematically analyzed and evaluated. Appendix J of the Proposed RMP/Final EIS outlines all substantive comments received and BLM's responses to those comments. Comments on the Draft RMP/EIS received from the public and internal BLM review comments were incorporated into the proposed plan. Public comments resulted in several changes to the preferred alternative and in the addition of clarifying text. A summary of these changes is included at the beginning of the Proposed RMP/Final EIS.

The Proposed Plan will help BLM meet its mandate of multiple use and sustained yield and recommends the designation of four new Special Recreation Management Areas (SMRAs) and one Research Natural Area (RNA). Restrictions on uses or activities within the SRMAs and RNA will be limited to those necessary to prevent degradation of the relevant and important values for which an area is designated.

Copies of the Proposed East Alaska RMP/Final EIS have been sent to affected Federal, State, and Local Government agencies and to interested parties. Copies of the Proposed RMP/Final EIS are available for public inspection at the BLM Glennallen Field Office located at Mile 186.5 Glenn Highway, Glennallen, Alaska during normal business hours from 8 a.m. to 4:30 p.m. Monday through Friday except holidays. Copies of the Proposed RMP/Final EIS have been sent to individuals, agencies, and groups as requested or as required by regulation or policy. Interested persons may also review the proposed RMP/Final EIS on the Internet at *www.ak.blm.gov/gdo/landplan/index.html* or at one of the following locations in and around the planning area:

BLM Anchorage Field Office, Anchorage.
BLM Northern District Office, Fairbanks.
BLM Alaska State Office, Public Room, Anchorage.
Chugach National Forest Service, Cordova.
Copper Valley Community Library, Glennallen.
Delta Junction Community Library, Delta Junction.
Denali Borough Office, Healy.
Kenny Lake Community Library, Kenny Lake.
Loussac Library, Anchorage.
Mat-Su Borough Office, Palmer.
National Park Service, Wrangell-St. Elias, Copper Center.
National Park Service, Denali, McKinley Village.
Noel Wien Library, Fairbanks.
North Pole Library, North Pole.
Valdez Public Library, Valdez.
Yakutat Borough Office, Yakutat.

Instructions for filing a protest with the Director of the BLM regarding the Proposed Plan/Final EIS may be found at 43 CFR 1610.5–2. A protest may only raise those issues which were submitted for the record during the planning process. E-mail and faxed protests will not be accepted as valid protests unless the protesting party also provides the original letter by either regular or overnight mail postmarked by the close of the protest period. Under these conditions, BLM will consider the e-mail or faxed protest as an advance copy and it will receive full consideration. If you wish to provide BLM with such advance notification, please direct faxed protests to the attention of the BLM protest coordinator at 202–452–5112, and e-mails to *Brenda_Hudgens-Williams@blm.gov.*

Please direct the follow-up letter to the appropriate address provided below.

The protest must contain:

a. The name, mailing address, telephone number, and interest of the person filing the protest.

b. A statement of the part or parts of the plan and the issue or issues being protested.

c. A copy of all documents addressing the issue(s) that the protesting party submitted during the planning process or a statement of the date they were discussed for the record.

d. A concise statement explaining why the protestor believes the State Director's decision is wrong.

All protests must be in writing and mailed to one of the following addresses:

Regular Mail: Director (210), Attention: Brenda Williams, P.O. Box 66538, Washington, DC 20035.

Overnight Mail: Director (210), Attention: Brenda Williams, 1620 L Street, NW., Suite 1075, Washington, DC 20036.

Individual respondents may request confidentiality. If you wish to withhold your name or street address from public review or from disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your protest. Such requests will be honored to the extent allowed by law. All submissions from organizations and businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be available for public inspection in their entirety.

The Director will promptly render a decision on the protest. The decision will be in writing and will be sent to the protesting party by certified mail, return receipt requested. The decision of the Director is the final decision of the Department of the Interior.

Dated: April 6, 2006.

Henri Bisson,

Alaska State Director.

[FR Doc. E6–10785 Filed 7–7–06; 8:45 am]

BILLING CODE 4310–JA–P

DEPARTMENT OF THE INTERIOR

National Park Service

60-Day Notice of Intention To Request Clearance of Collection of Information; Opportunity for Public Comment

AGENCY: National Park Service, Interior.

ACTION: Notice and request for comment.

SUMMARY: Under provisions of the Paperwork Reduction Act of 1995 and 5 CFR part 1320, Reporting and Record Keeping Requirements, the National park Service (NPS) invites public comments on an extension of a currently approved information collection (OMB #1024–0125).

DATES: Public comments will be accepted on or before September 8, 2006.

ADDRESSES: Send comments to Jo A. Pendry, Concession Program Manager, National Park Service, 1849 C Street, NW., (2410), Washington, DC 20240; e-mail *jo_pendry@nps.gov*; Phone: 202/513–7144; Fax: 202/371–2090.

SUPPLEMENTARY INFORMATION:

Title: Submission of Offers in Response to Concession Opportunities.

Bureau Form Number: None.

OMB Control Number: 1024–0125.

Expiration Date of Approval: December 31, 2006.

Type of Request: Extension of a currently approved information collection.

Description of Need: The regulations at 36 CFR part 51 primarily implement Title IV of the National Parks Omnibus Management Act of 1998 (Pub. L. 105–391 or the Act), which provides new legislative authority, policies and requirements for the solicitation, award and administration of NPS concession contracts. The regulations require the submission of offers by parties interested in applying for a NPS concession contract.

The NPS specifically requests comments on: (1) The need for the collection of information for the performance of the functions of the agency; (2) the accuracy of the agency's burden estimates; (3) ways to enhance the quality, utility and clarity of the information collection; and (4) ways to minimize the information collection burden on respondents, such as use of automated means of collection of the information.

Frequency of Collection: On occasion.

Description of Respondents: Persons or entities seeking a National Park Service concession contract.

Total Annual Responses: 240.

Estimate of Burden: Approximately 56 hours per response.

Total Annual Burden Hours: 76,800.

Total Non-hour Cost Burden: $1,120,000.

Specific requirements regarding the information that must be submitted by offerors in response to a prospectus issued by NPS are contained in sections 403(4), (5), (7), and (8) of the Act. Send comments regarding the accuracy of the burden estimate, ways to minimize the burden, including the use of automated collection techniques or other forms of information technology, or any other aspect of this collection to Jo A. Pendry, Concession Program Manager, National Park Service, Department of the Interior, 1849 C Street, NW., (2410) Washington, DC 20240. All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Dated: June 27, 2006.

Leonard E. Stowe,

NPS, Information Collection Clearance Officer.

[FR Doc. 06–6069 Filed 7–7–06; 8:45 am]

BILLING CODE 4312–53–M

DEPARTMENT OF THE INTERIOR

National Park Service

30-Day Notice of Intention To Request Clearance of Collection of Information to the Office of Management and Budget; Opportunity for Public Comment

AGENCY: National Park Service, The Department of the Interior.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C., chapter 3507) and 5 CFR Part 1320, Reporting and Record keeping Requirements, the National Park Service invites public comments on a submitted request to the Office of Management and Budget (OMB) to approve a request to reinstate, with change, a previously approved collection for which approval has expired (OMB #1024–0226).

The OMB has up to 60 days to approve or disapprove the requested information collection, but may respond after 30 days. Therefore, to ensure maximum consideration, OMB should receive public comments within 30 days of the date on which this notice is published in the **Federal Register.**

DATES: Public comments will be accepted on or before August 9, 2006.

ADDRESSES: You may submit comments directly to the Desk Officer for the Department of the Interior (OMB #1024–0226), Office of Information and Regulatory Affairs, OMB, by fax at (202) 395–6566, or by e-mail at *oira_docket @omb.eop.gov.* Please also mail or hand carry a copy of your comments to Cyndi Szymanski, Outdoor Recreation Planner, Rivers, Trails and Conservation Assistance Program, National Park Service, 1849 C Street, NW., (org code 2220), Washington, DC 20240. all comments will be a matter of public record.

FOR FURTHER INFORMATION CONTACT: Cyndi Szymanski, Outdoor Recreation Planner, Rivers, Trails and Conservation Assistance Program, National Park Service, 1849 C Street, NW., (org code 2220), Washington, DC 20240.

The National Park Service published the 60-day **Federal Register** notice to solicit comments on this proposed information collection on March 29, 2006 on pages 15759–15760. There was one public comment received as a result of publishing in the **Federal Register** a 60-day Notice of Intention to Request Clearance of Collection of Information for this survey. Comments were also solicited from 28 past partners and two responses were received. Both respondents indicated that they had no comments so no adjustments were made to the survey.

SUPPLEMENTARY INFORMATION: *Titles:* National Park Service Partnership Assistance Programs' GPRA Information Collections: Rivers, Trails and Conservation Assistance Customer Satisfaction Survey and Federal Lands to Parks Customer Satisfaction Survey.

Form: None.

OMB Number: NPS 1024–0226.

Expiration Date: To be requested.

Type of request: Reinstatement, with change, of a previously approved collection for which approval has expired.

Description of need: The Government Performance and Results Act requires Federal agencies to prepare annual performance reports documenting the progress made toward achieving long-term goals. The National Park Service needs the information in the proposed collections to assess the annual progress being made toward meeting Long-term Goal IIIb2 of the National Park Service Strategic Plan. The information sought is not collected elsewhere by the Federal Government. The proposed information collections impose no data collection or record keeping burden on the potential respondents. Responding to the proposed collections is voluntary and is based on data that the respondents already collect and/or personal opinion. The National Park Service needs information to help evaluate and improve its partnership assistance programs.

Specifically two information collections will be carried out pursuant to the Government Performance and Results Act and the NPS Strategic Plan. Both of the proposed information collections are surveys of customer satisfaction of certain NPS programs and types of assistance. NPS' Rivers, Trails and Conservation Assistance Program and Federal Lands to Parks Program will conduct surveys to assess client satisfaction with the services received and to identify needed program improvements. The NPS goal in conducting these surveys is to use the information to identify areas of strength and weakness in its recreation and conservation assistance programs, to provide an information base for improving those programs, and to provide a required performance measurement (Goal IIIb2 of the National Park Service Strategic Plan) under the Government Performance and Results Act.

Public comments are invited on: (1) The need for information including whether the information has practical utility; (2) the accuracy of the reporting burden estimate; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of information collection on respondents, including the use of automated collection techniques or other forms of information technology.

Description of respondents: The potential respondents will be all contact persons of all principal cooperating organizations and agencies which have received substantial assistance from the Rivers, Trails and Conservation Assistance Program or the Federal Lands to Parks Program during the prior Fiscal Year (October 1 through September 30).

Estimated average number of respondents: 255. See the chart below for a breakdown by each information collection.

Estimated average number of responses: 150. See the chart below for a breakdown by each information collection

Estimated average burden hours per response: 10 minutes. See the chart below for a breakdown by each information collection.

Frequency of Response: One time per publication or technical assistance event.

Estimated annual reporting burden: 25 hours. See the chart below for a breakdown by each information collection.

Estimated number of:

Information collection	Respondents	Responses	Average time per response (min.)	Hours
Rivers, Trails and Conservation Assistance Program	200	120	10	20
Federal Lands to Parks Programs	55	30	10	5
Subtotal	255	150	10	25

Dated: June 27, 2006.

Leonard E. Stowe,

National Park Service Information and Collection Clearance Officer.

[FR Doc. 06–6070 Filed 7–7–06; 8:45 am]

BILLING CODE 4312–52–M

DEPARTMENT OF THE INTERIOR

National Park Service

Final Environment Impact Statement for Reconstruction of the Furnace Creek Water Collection System, Death Valley National Park, Inyo County, CA; Notice of Availability

SUMMARY: Pursuant to the National Environmental Policy Act (NEPA) of 1969 (Pub. L. 91–190, § 102(2)(c), and the Council on Environmental Quality regulations for implementing NEPA (40 CFR 1500–1508), the U.S. Department of the Interior, National Park Service, and its cooperating agency have completed the Final Environmental Impact Statement (FEIS) for the proposed reconstruction of the Furnace Creek Water Collection System. This water collection system reconstruction project is located in the Furnace Creek area of Death Valley National Park, California. The proposed project would rebuild the outdated water collection system in the Furnace Creek area to deliver a safe and reliable potable and nonpotable water supply to the park's main visitor use area. The FEIS was prepared in accordance with the National Park Service NEPA guidelines (Director's Order 12).

Background

The National Park Service (NPS), Xanterra Parks & Resorts (Xanterra), and the Timbisha Shoshone Tribe (cooperating agency) are the primary water user groups in the Furnace Creek area. The Texas-Travertine Springs complex in the Furnace Creek area may be the most critical water resource in Death Valley National Park. This series of springs provide water for all of the human use needs in the park headquarters area. Infrastructure in this area includes the primary National Park Service administrative offices, three NPS campgrounds, two private resort/visitor services facilities owned and operated by Xanterra, and offices and residences for the Timbisha Shoshone Tribe. The Texas-Travertine Springs complex also provides water that supports a riparian area—a biological community that includes habitat for a minimum of eight endemic special-status aquatic invertebrate species—and a biologically and culturally important mesquite bosque.

The existing water collection system was installed in the 1970's and has been unreliable, subject to failure, and is nearing the end of its useful life span. Many of the existing collection galleries have intermittently tested positive for coliform or E. coli bacteria, experienced unpredictable inputs of soil or organic matter, intermittently and unpredictably produced reduced volumes of water, and collected groundwater that does not meet state drinking water standards. When the system was installed approximately 30 years ago, there was an incomplete understanding of the Furnace Creek area's unique biological resource values, and water conservation strategies were not a priority.

The park proposed to rebuild the antiquated water collection system in the Furnace Creek area to deliver safe and reliable drinking water to the park's main visitor use area and provide separate delivery systems for potable and nonpotable water. As part of the redevelopment of the Furnace Creek water collection system, the proposal would include restoring historic wetland and riparian habitat and providing for the long-term conservation of species endemic to the Furnace Creek area.

Proposal and Alternatives

The Draft EIS identified and analyzed four alternatives for reconstruction of the Furnace Creek Water Collection System; these alternatives are not substantially modified in the FEIS. The first alternative, the No Action Alternative, would result in continued operation and maintenance of the existing water collection system. This alternative also composes an environmental ''baseline'' from which to compare the potential effects of other alternatives considered. Three ''action'' alternatives would primarily differ in terms of how each would provide potable water to the Furnace Creek area.

Alternative 2 would provide potable water from rebuilt collection galleries at Travertine Springs Line 3 and Line 4 and from two new groundwater wells in the Texas Springs Syncline. Alternative 2 would treat potable water using a reverse osmosis water treatment plant. Riparian water would be released from Travertine Springs Line 1 and Line 2 and from Texas Springs to restore historic wetland and riparian habitat. The restoration effort would include the incorporation of riparian water release measures that would reduce erosion and promote groundwater infiltration.

Alternative 3 (agency preferred) would provide potable water from two to three new groundwater wells in the Texas Springs Syncline and would treat potable water using a reverse osmosis water treatment plant. Riparian water would be released from all of Travertine Springs and Texas Springs to restore historic wetland and riparian habitat. The restoration effort would include the incorporation of riparian water release measures that would reduce erosion and promote groundwater infiltration. Based on existing information and as documented in the EIS, Alternative 3 has been deemed to be the ''environmentally preferable'' alternative.

Alternative 4 would provide potable water from Tavertine Springs Lines 2, 3, and 4 and from Texas Springs and would treat water using a reverse osmosis water treatment plant with supplemental water disinfection. Since the NPS would treat all potable water under this alternative, Travertine Springs would not require reconstruction of spring collection boxes or clearing and grubbing of vegetation from the spring water collection areas. Riparian water would be released from Travertine Springs Line 1 and from Texas Springs to restore historic wetland and riparian habitat. The restoration effort would include the incorporation of riparian water release measures that would reduce erosion and promote groundwater infiltration.

Project Planning Background

Public and agency participation has been incorporated in this conservation planning and environmental impact analysis process.

Death Valley National Park held public scoping and informal meetings in 2001 through 2004 to solicit ideas and concerns from park visitors, park staff, Native American groups, scientists, and government agencies. A Notice of Intent to prepare an EIS was published in the **Federal Register** on November 20, 2000. The NPS conducted an extensive public scoping process for the proposed reconstruction of the Furnace Creek Water Collection System that concluded on March 14, 2001. In addition to the **Federal Register** notice, information about the public scoping process was provided through local press releases, Web site postings, direct mailings, and the Furnace Creek Visitor Center newsletter.

Three public scoping meetings were held on January 30 (in Pahrump, Nevada), January 31 (in Death Valley National Park), and February 1, 2001 (in Independence, California). The purpose of these meetings was to: (1) Provide participants with an overview of existing conditions and the proposed

action; (2) ask participants to identify key issues that should be analyzed during the environmental review and compliance process; and (3) provide an opportunity for participants to ask questions regarding project alternatives and the overall conservation planning and environmental impact analysis process. As a result of the public scoping process, the NPS received two letters via U.S. mail and oral comments at the meetings. Issues identified during the public scoping process were summarized in the Draft EIS under the Planning Issues section, in Chapter I, Purpose and Need. All comments received during the public scoping process were duly considered in preparing the Draft EIS. In addition to public scoping, the park and its cooperating agency have also consulted with the U.S. Fish and Wildlife Service, U.S. Army Corps of Engineers, California State Historic Preservation Office, and Lahontan Regional Water Quality Control Board.

The Draft EIS was available for public review during a 60-day comment period formally initiated with EPA's notice of filing of the document published in the **Federal Register** on November 14, 2005. The comment period concluded December 12, 2005. The NPS hosted two public meetings during the public review period to encourage comments from the public. The meetings were held on November 15 (in Death Valley National Park) and November 16 (in Pahrump, Nevada). The NPS received 7 comments on the Draft EIS, including 2 comments from unaffiliated individuals and 5 comments from Federal and State agencies. All comments and resposnes are included in the FEIS. Comments from the California Regional Water Quality Control Board and the EPA raised the possibility of additional alternatives for disposal of the brine resulting from the reverse osmosis water treatment process. These techniques are addressed in the possible disposal alternatives considered in the FEIS.

Copies

A printed copy of the FEIS may be obtained by telephoning (760) 786–3243, e-mailing (*deva_superintendent@nps.gov*), or faxing (760) 786–3283 a request to Death Valley National Park. The document also can be viewed via the Internet at the PEPC Web site *http://www.nps.gov/deva/pphtml/documents.html.* For further information, please contact: James T. Reynolds, Superintendent, Death Valley National Park, Death Valley, California 92328; telephone: (760) 786–3243.

Decision Process

The National Park Service will execute a Record of Decision not sooner than 30 days following publication by the Environmental Protection Agency of the notice of filing and availability of the FEIS. Announcement of the decision will be noticed in the **Federal Register** and via local and regional press media. As a delegated EIS, the official responsible for the final decision regarding the Furnace Creek water system is the Regional Director, Pacific West region. Subsequently the official responsible for implementing the approved project will be the Superintendent, Death Valley National Park.

Dated: April 20, 2006.

Jonathan B. Jarvis,

Regional Director, Pacific West Region.

[FR Doc. 06–6072 Filed 7–7–06; 8:45 am]

BILLING CODE 4312–FF–M

DEPARTMENT OF THE INTERIOR

National Park Service

General Management Plan for Lava Beds National Monument Siskiyou and Modoc Counties, California; Notice of Intent To Prepare an Environmental Impact Statement

SUMMARY: Pursuant to the provisions of the National Environmental Policy Act of 1969 (Pub. L. 91–190) and Council on Environmental Quality's implementing regulations (40 CFR 1502.9(c)), the U.S. Department of Interior, National Park Service (NPS), is initiating the scoping phase of the conservation planning and environmental impact analysis process for updating the General Management Plan (GMP) for lava Beds National Monument (Monument). Following the scoping phase and consideration of public concerns and other agency comments, a Draft Environmental Impact Statement for the GMP will be prepared and released for public review. The GMP will address desired conditions for the Monument, uses or treatment needs for resource protection, visitor use and other management goals; it will serve as a ''blueprint'' to guide future management for the next 15–20 years. The purpose of the scoping outreach efforts is to elicit early public comment regarding issues and concerns, the nature and extent of potential environmental impacts (and as appropriate, mitigation measures), and alternatives which should be addressed in the plan update.

Consistent with NPS Planning Program Standards the updated GMP will: (1) Describe the Monument's purpose, significance, and primary interpretive themes; (2) identify the fundamental resources and values of the Monument, its other important resources and values, and describe the condition of these resources; (3) describe desired conditions for cultural and natural resources and visitor experiences throughout the Monument; (4) develop management zoning to support these desired conditions; (5) develop alternative applications of these management zones to the Monument landscape (i.e., zoning alternatives); (6) address user capacity; (7) analyze potential boundary modifications; (8) ensure that management recommendations are developed in consultation with interested stakeholders and the public and adopted by NPS leadership after an adequate analysis of the benefits, environmental impacts, and economic costs of alternative courses of action; and (9) identify and prioritize subsequent detailed studies, plans and actions that may be needed to implement the updated GMP.

Scoping: Through the outreach activities planned in the scoping phase, the NPS welcomes information and suggestions from the public regarding resource protection, visitor use, and land management. This notice formally initiates the public scoping comment phase for the EIS process for the GMP update. All scoping comments must be postmarked or transmitted not later than September 2, 2006. All written responses should be submitted to the following address: General Management Plan, Lava Beds National Monument, Attn.: Craig Dorman, Superintendent, 1 Indian Well Headquarters, Tulelake, CA 96134. As noted, a key purpose of the scoping process is to elicit early public comment on matters which should be considered in updating the GMP in order to inform the development of the Draft EIS. At this time it is expected that three public meetings will be hosted in towns near the Monument during June 5–8, 2006. Detailed information regarding these meetings will be posted on the GMP Web site (*http://parkplanning.nps.gov/labe*). All attendees will be given the opportunity to ask questions and provide comments to the planning team. The GMP Web site will provide the most up-to-date information regarding the project, including project description, planning process updates, meeting notices, reports and documents, and useful links associated with the project.

It is the practice of the NPS to make all comments, including names and addresses of respondents who provide

that information, available for public review. NPS will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organzations or businesses, available for public inspection in their entirety. Individuals may request that the NPS withhold their name and/or address from public disclosure. If you wish to do this, you must state this prominently at the beginning of your comments. Respondents using the Web site can make such a request by checking the box: ''keep my contact information private.'' NPS will honor such requests to the extent allowable by law, but you should be aware that NPS may still be required to disclose your name and address pursuant to the Freedom of Information Act.

SUPPLEMENTARY INFORMATION:

This unit of the National park System was established in 1925 to protect and interpret volcanic and natural features of scientific interest, and evidence of prehistoric and historic human settlement, use, and conflict. The 46,560 acre Monument covers 10% of the Medicine Lake shield volcano which lies on the margin of the Cascade Range and Great Basin Geologic Provinces. This remote landscape contains outstanding, diverse, abundant and well-preserved lava flows, cinder cones, Maar volcanoes, and other volcanic features associated with the Medicine Lake shield volcano, including one of the largest concentrations of lava tube caves in the continental United States. The Monument's geologic resources provide many opportunities for exploration and research of unique habitats.

The dramatic volcanic landscape served as the setting for the Modoc War (1872–1873) and contains archeological evidence of over 11,000 years of human occupation. The lands are significant to Modoc people as part of their traditional homeland. In addition, the Monument has two designated units of the National Wilderness Preservation System totaling 28,460 acres. Wilderness areas provide a primitive recreation experience for visitors in a volcanic Great Basin landscape, as well as invaluable scientific and educational opportunities as surrounding landscapes and social conditions continue to change.

The Monument is primarily surrounded by public lands. The northern edge is bounded by the Tule Lake National Wildlife Refuge. The western, southern and eastern edges are bounded by the Modoc National Forest. A small area on the northeast corner is bounded by privately owned lands, and a commercial forest products inholding is adjacent to the Monument to the south. Petroglyph Point, a detached unit of the Monument, is surrounded by, or very close to, private lands.

The previous GMP, completed in June 1996, identified needed infrastructure and other improvements. Most of the recommendations in this prior plan have since been implemented, including construction of a research center and a new visitor center. Resource management, interpretation, visitor protection and other GMP components were not addressed in the last plan. New inventories and research have been completed since the last GMP including the discovery of additional caves within the Monument, a macro-invertebrate study, and study of fire effects on exotic plants. Drafts of a Wilderness Plan and a Cave Management Plan have also been completed. Future management direction is needed for staff to address changing patterns of visitor use and for effective and long term management of natural and cultural resources.

Decision Process

Availability of the forthcoming Draft EIS for public review and written comment will be formally announced through the publication of a Notice of Availability in the **Federal Register**, as well as through local and regional news media, direct mailing to the project mailing list, and via the Internet at *http://parkplanning.nps.gov/labe.* Following due consideration of all agency and public comment, a Final EIS will be prepared. As a delegated EIS, the official responsible for the final decision on the proposed plan is the Regional Director, Pacific West Region, National Park Service. Subsequently, the official responsible for implementation of the approved plan is the Superintendent, Lava Beds National Monument. It is anticipated that the final plan will be available in winter 2009.

Dated: May 3, 2006.

Jonathan B. Jarvis,

Regional Director, Pacific West Region.

[FR Doc. 06–6074 Filed 7–7–06; 8:45 am]

BILLING CODE 4312–GE–M

DEPARTMENT OF THE INTERIOR

National Park Service

Tuolumne Wild and Scenic River Comprehensive Management Plan and Tuolumne Meadows Concept Plan, Yosemite National Park; Madera, Mariposa, Mono and Tuolumne Counties, California; Notice of Intent To Prepare an Environmental Impact Statement

Summary: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 and the Wild and Scenic Rivers Act (Pub. L. 90–542), the National Park Service is initiating a public scoping process as necessary to obtain information which will aid in the preparation of the Tuolumne Wild and Scenic River Comprehensive Management Plan and Tuolumne Meadows Concept Plan for Yosemite National Park, California. The purpose of this scoping phase is to elicit early public comments regarding issues and concerns to be addressed in preparing an Environmental Impact Statement (EIS), including a suitable range of alternatives, the nature and extent of potential environmental impacts, and appropriate mitigation strategies.

During the ensuing conservation planning and environmental impact analysis process, the National Park Service (NPS) will develop a range of management alternatives that is intended to: (1) Provide broad guidance for the protection and enhancement of the river's Outstandingly Remarkable Values (ORVs); (2) address river boundaries and classifications pursuant to the Wild and Scenic Rivers Act; (3) define a user capacity program for the river which includes the Visitor Experience and Resource Protection framework; (4) prescribe management zones for the river corridor (i.e., desired conditions); and (5) establish the section 7 determination process. The plan/EIS will also make technical corrections to the description and mapping of the Dana Fork headwaters, and clarify the language for definition of river segments below Hetch Hetchy; these corrections will be in accordance with the directives of the Wild and Scenic Rivers. In addition, the Tuolumne Meadows Concept Plan will address such factors as day use parking and transportation, water collection and wastewater treatment facility needs, optimal spatial organization of park and concession facilities, and options for enhancing visitor information services. In some cases a site-specific environmental impacts analysis may be included to facilitate possible future

relocation, rehabilitation, addition or removal of facilities and opportunities for site restoration.

In cooperation with Mariposa, Madera, Tuolumne, Mono, and Inyo Counties, attention will also be given to the potential socio-economic impacts on these counties. Additionally, in consultation with culturally-associated American Indians, attention will also be given to the Traditional Cultural Resources to which these groups attach significance. Alternatives to be considered will include a No Action and an undetermined number of action alternatives; among these an ''environmentally preferred'' alternative will be identified.

Background

In 1979, a Tuolumne Wild and Scenic River Study and Environmental Impact Statement was prepared which recommended designation of the river and specified ''wild'' and ''scenic'' classifications. In 1984, 83 miles of the Tuolumne River were designated Wild and Scenic under Public Law 94–425; a total of 54 miles of the Tuolumne Wild and Scenic River are under NPS jurisdiction in Yosemite National Park. In a 1986 **Federal Register** notice and related announcements, the NPS established classifications of the river segments, which include: The Lyell Fork, a wild segment originating at the headwaters from Mt. Lyell; the Dana Fork, a scenic segment originating from the headwaters at Mt. Dana; a scenic segment through Tuolumne Meadows; a wild segment from the Grand Canyon of the Tuolumne River to the inlet of the Hetch Hetchy Reservoir; and a scenic segment from one mile west of O'Shaughnessey Dam; and the remaining 5-mile wild segment through Poopenaut Valley to the park boundary. Approximately 13 miles of the Hetch Hetchy Reservoir were not included in the 1984 Wild and Scenic River designation and thus are not included within the Tuolumne Wild and Scenic River corridor. Interim boundaries (¼ mile on each side of the river) were established in the 1979 Tuolumne Wild and Scenic River Study.

Scoping and Public Meetings

The participation of interested individuals and affected organizations will be a key element of the current Tuolumne River/Meadows conservation planning and environmental analysis process. Concurrently, tribal, federal, state, and local government representatives will be consulted. All written comments received during the scoping period, as well as oral commentary at all associated public meetings, will aid in the preparation of the EIS for the Tuolumne Wild and Scenic River Comprehensive Management Plan and Tuolumne Meadows Concept Plan (and preserved in the project's administrative record). Suggestions regarding issues to be addressed and information relevant to determining the scope of the current planning and analysis process are being sought from all interested individuals and groups. Public scoping meetings will be held in June, July, and August in Yosemite Valley, Tuolumne Meadows, Groveland, Sonora, Modesto, Sacramento, San Francisco, Mariposa, Oakhurst, Lee Vining, and Bishop. Dates, times, specific locations, and additional information will be released via regional and local news media, through the park's regular Planning Update newsletters (direct mailed and e-mailed), and posted on the part Web site (see below).

The scope of issues identified thus far to address in the Tuolumne Wild and Scenic River Comprehensive Management Plan include the identification of ORVs, determination of desired conditions and management prescriptions within the river corridor, establishment of detailed boundaries, development of a user capacity management program, and deciding upon a Section 7 determination process. The Tuolumne Meadows Concept Plan tentative issues include the possible relocation, rehabilitation, addition and/or removal of facilities as well as a comprehensive transportation review related to day use and parking. The Hetch Hetchy Reservoir and O'Shaughnessy Dam are under the jurisdiction of the San Francisco Public Utilities Commission, and neither the reservoir nor the dam are part of the designated Wild and Scenic River corridor. Thus the dam and reservoir will not be subject to the management elements evaluated through this planning effort.

All scoping comments received will be incorporated into a comment database and duly considered during the preparation of the draft plan\EIS. Written comments should be addressed to the Superintendent, Attn: Tuolumne Planning, Yosemite National Park, P.O. Box 577, Yosemite National Park, California 95389, or faxed to (209) 379–1294, and must be postmarked or faxed no later than 60 days from the publication date of this notice (or if sent via e-mail, transmitted by that date to *Yose_Planning@nps.gov*)—immediately upon confirmation of this date an announcement of the closing date for the scoping period will be posted on the park Web site *http://www.nps.gov/yose/planning*, and announced via press releases distributed to local and regional media. Please note that names and addresses of all respondents will become part of the public record. It is the practice of the NPS to make all comments, including names and addresses of respondents who provide that information, available for public review following the conclusion of the EIS process. Individuals may request that the NPS withhold their name and\or address from public disclosure. If you wish to do so, you must state this prominently at the beginning of your comments. Those respondents who use the Web site can make such a request by checking the box ''keep my information private''. NPS will honor all such requests to the extent allowable by law, but you should be aware that NPS may still be required to disclose your name and address pursuant to the Freedom of Information Act.

Decision Process

Announcements of future public involvement opportunities, as well as availability of the draft Tuolumne River Plan\Tuolumne Meadows Concept Plan EIS for public review, will be accomplished via regional news media, direct mailings, and the **Federal Register**. At this time, release of the draft plan\EIS for review and comment is expected to occur during summer, 2007. After due consideration of all comments received on the draft EIS, a final plan\EIS will be prepared and its availability similarly announced. As this is a delegated EIS, the official responsible for the final decision regarding the forthcoming plan is the Regional Director, pacific West Region, National Park Service; subsequently the official responsible for implementation of the approved plan is the Superintendent, Yosemite National Park.

Dated: July 9, 2006.

George J. Turnbull,

Acting Regional Director, Pacific West Region.

[FR Doc. 06–6073 Filed 7–7–06; 8:45 am]

BILLING CODE 4312–FY–M

DEPARTMENT OF THE INTERIOR

National Park Service

Great Sand Dunes National Park Advisory Council Meeting

AGENCY: National Park Service, DOI.

ACTION: Announcement of meeting.

SUMMARY: Great Sand Dunes National Park and Preserve announces a meeting of the Great Sand Dunes National Park

Advisory Council, which was established to provide guidance to the Secretary on long-term planning for Great Sand Dunes National Park and Preserve.

DATES: The meeting date is:

1. July 28, 2006, 9 a.m.–12 p.m., Mosca, Colorado.

ADDRESSES: The meeting location is:

1. Mosca, Colorado—Great Sand Dunes National Park and Preserve Visitor Center, 11999 Highway 150, Mosca, CO 81146.

FOR FURTHER INFORMATION CONTACT: Steve Chaney, 719–378–6312.

SUPPLEMENTARY INFORMATION: At the July 28 meeting, the National Park Service will share a summary and discuss the comments received during the review period for the draft General Management Plan, Wilderness Study and EIS. A public comment period will be held from 11:30 a.m. to 12 p.m.

Michael D. Snyder,

Regional Director.

[FR Doc. 06–6076 Filed 7–7–06; 8:45 am]

BILLING CODE 4312–CL–M

DEPARTMENT OF THE INTERIOR

National Park Service

Selma to Montgomery National Historic Trail Advisory Council Notice of Meeting

Notice is hereby given in accordance with the Federal Advisory Committee Act, Public Law 92–463, that a meeting of the Selma to Montgomery National Historic Trail Advisory Council will be held Tuesday, July 18, 2006 at 9 a.m. until 3:30 p.m., at the Lowndes County Interpretive Center located at 7001 Highway 80 West, Hayneville, Alabama. The Selma to Montgomery National Historic Trail Advisory Council was established pursuant to Public Law 100–192 establishing the Selma to Montgomery National Historic Trail. This Council was established to advise the National Park Service on such issues as preservation of trail routes and features, public use, standards for posting and maintaining trail markers, and administrative matters.

The matters to be discussed include:

(A) Welcome New Members.

(B) Update on Lowndes County IC.

(C) Update on other Interpretive Sites.

The meeting will be open to the public. However, facilities and space accommodating members of the public are limited and persons will be accommodated for first come, first serve basis. Anyone may file a written statement with Catherine F. Light, Trail Superintendent concerning the matters to be discussed.

Persons wishing further information concerning this meeting may contact Catherine F. Light, Trail Superintendent, Selma to Montgomery National Historic Trail, at 334–727–6390 (phone), 334–727–4597 (fax) or mail 1212 Old Montgomery Road, Tuskegee Institute, Alabama 36088.

Dated: June 21, 2006.

Shirley T. Streeter,

Administrative Officer, Selma to Montgomery NHT.

[FR Doc. 06–6075 Filed 7–7–06; 8:45 am]

BILLING CODE 4310–04–M

INTERNATIONAL TRADE COMMISSION

In the Matter of Certain Power Supply Controllers and Products Containing Same; Notice of Commission Determination Not To Review a Final Initial Determination of Violation of Section 337; Schedule for Filing Written Submissions on Remedy, the Public Interest, and Bonding

AGENCY: U.S. International Trade Commission

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review the Administrative Law Judge's (''ALJ'') final Initial Determination (''ID'') finding a violation of section 337. Notice is further given that the Commission is requesting briefing on remedy, public interest, and bonding with respect to the respondent found in violation.

FOR FURTHER INFORMATION CONTACT: Michelle Walters, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 708–5468. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205–2000. General information concerning the Commission may also be obtained by accessing its Internet server at *http://www.usitc.gov.* The public record for this investigation may be viewed on Commission's electronic docket (EDIS) at *http://www.usitc.gov/secretary/edis.htm.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's ADD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: On June 13, 2005, the Commission instituted this investigation, based on a complaint filed by Power Integrations, Inc. (''PI'') of San Jose, California. The complaint, as amended and supplemented, alleges violations of section 337 of the Tariff Act of 1930 (19 U.S. 1337) in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain power supply controllers and products containing the same by reason of infringement of claims 1–3, 6, 9, and 17–19 of United States Patent No. 6,212,079; claims 1–3, 5, 6, 24, 28, and 29 of United States Patent No. 6,351,398 (''the '398 patent''; claims 8 and 12 of United States Patent No. 6,366,481; and claims 1, 4, 9–11, 12, 17, 19, 20, 22, 23, 26, 27, 30, 31, and 34 of United States Patent No. 6,538,908 (''the '908 patent''). During the investigation, the Commission allowed PI to terminate the investigation with regard to several claims, leaving only claims 1, 3, 5, and 6 of the '398 patent and claims 26 and 27 of the '908 patent in this investigation. The complaint named a single respondent, System General Corporation (''SG'').

On May 15, 2006, the ALJ issued a final ID, including his recommended determination on remedy and bonding. In his ID, the ALJ found that SG's accused products infringe claims 1, 3, 5, and 6 of the '398 patent and claims 26 and 27 of the '908 patent. Moreover, he concluded that these claims are not invalid for anticipation under 35 U.S.C. 102 and that the '398 patent and the '908 patent are not unenforceable due to inequitable conduct. Finally, the ALJ concluded that PI proved that there is a domestic industry in the United States with respect to both patents. As a result, the ALJ recommended issuing a limited exclusion order directed to infringing power supply controllers produced by SG, as well as certain downstream products containing these controllers.

On May 26, 2006, respondent SG filed a petition for review, challenging various aspects of the ALL's final ID. On June 5, 2006, PI and the Commission investigative attorney separately filed responses to SG's petition for review, asserting that the ALJ properly determined that there was a violation of section 337 with regard to the asserted claims.

Having examined the record of this investigation, including the ALL's final ID, the petitions for review, and the responses thereto, the Commission has

determined not to review the ALL's ID. To the extent SG attempts to challenge PI's satisfaction of the importation requirement of 19 U.S.C. 1337(a)(l)(B) in its petition for review, we decline to reconsider the issue. SG failed to file a petition for review challenging the ALL's December 12, 2005 ID granting PI's motion for summary determination that it satisfied the importation requirement, and therefore, SG waived the issue. 19 CFR 210.43(b)(2).

In connection with the final disposition of this investigation, the Commission may (1) issue an order that could result in the exclusion of the subject articles from entry into the United States, and/or (2) issue one or more cease and desist orders that could result in the respondent being required to cease and desist from engaging in unfair acts in the importation and sale of such articles. Accordingly, the Commission is interested in receiving written submissions that address the form of remedy, if any, that should be ordered. If a party seeks exclusion of an article from entry into the United States for purposes other than entry for consumption, the party should so indicate and provide information establishing that activities involving other types of entry either are adversely affecting it or likely to do so. For background, *see Certain Devices for Connecting Computers via Telephone Lines*, Inv. No. 337–TA–360, USITC Pub; No. 2843 (December 1994) (Commission Opinion).

If the Commission contemplates some form of remedy, it must consider the effects of that remedy upon the public interest. The factors the Commission will consider include the effect that an exclusion order and/or cease and desist orders would have on (1) the public health and welfare, (2) competitive conditions in the U.S. economy, (3) U.S. production of articles that are like or directly competitive with those that are subject to investigation, and (4) U.S. consumers. The Commission is therefore interested in receiving written submissions that address the aforementioned public interest factors in the context of this investigation.

If the Commission orders some form of remedy, the U.S. Trade Representative, as delegated by the President, has 60 days to approve or disapprove the Commission's action. *See* Presidential Memorandum of July 21, 2005, 70 FR 43251 (July 2, 2005). During this period, the subject articles would be entitled to enter the United States under bond, in an amount determined by the Commission and prescribed by the Secretary of the Treasury. The Commission is therefore interested in receiving submissions concerning the amount of the bond that should be imposed if a remedy is ordered.

Written Submissions: The parties to the investigation are requested to file written submissions on the issues identified in this notice. Parties to the investigation, interested government agencies, and any other interested parties are encouraged to file written submissions on the issues of remedy, the public interest, and bonding. Such submissions should address the recommended determination by the ALJ on remedy and bonding. Complainant and the Commission investigative attorney are also requested to submit proposed remedial orders for the Commission's consideration. Complainant is also requested to state the dates that the patents expire and the HTSUS numbers under which the accused products are imported. The written submissions and proposed remedial orders must be filed no later than close of business on July 10, 2006. Reply submissions must be filed no later than the close of business on July 17, 2006. No further submission on these issues will be permitted unless otherwise ordered by the Commission.

Persons filing written submission must file the original document and 12 true copies thereof on or before the deadlines stated above with the Office of the Secretary. Any person desiring to submit a document to the Commission in confidence must request confidential treatment unless the information has already been granted such treatment during the proceedings. All such requests should be directed to the Secretary of the Commission and must include a full statement of the reasons why the Commission should grant such treatment. *See* 19 CFR 210.6. Documents for which confidential treatment by the Commission is sought will be treated accordingly. All nonconfidential written submissions will be available for public inspection at the Office of the Secretary.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in sections 210.42–46 and 210.50 of the Commission's Rules of Practice and Procedure (19 CFR 210.42–46 and 210.50).

Issued: June 30, 2006.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 06–6081 Filed 7–7–06; 8:45 am]

BILLING CODE 7020–02–M

INTERNATIONAL TRADE COMMISSION

[USITC SE–06–045]

Government in the Sunshine Act Meeting Notice

AGENCY HOLDING THE MEETING: United States International Trade Commission.

TIME AND DATE: July 18, 2006 at 11 a.m.

PLACE: Room 101, 500 E Street, SW., Washington, DC 20436, Telephone: (202) 205–2000.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agenda for future meetings: None.
2. Minutes.
3. Ratification List.
4. Inv. No. 731–TA–539–C (Second Review) (Uranium from Russia)—briefing and vote. (The Commission is currently scheduled to transmit its determination and Commissioners' opinions to the Secretary of Commerce on or before August 1, 2006.)
5. Outstanding action jackets: None.

In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

Issued: July 6, 2006.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 06–6124 Filed 7–6–06; 12:54 pm]

BILLING CODE 7020–02–P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Section 110(c) of the Federal Mine Safety and Health Act of 1977; Interpretation

AGENCY: Mine Safety and Health Administration (MSHA), Department of Labor.

ACTION: Interpretive rule.

SUMMARY: The Interpretive Bulletin reproduced below sets forth a statement of the Secretary of Labor's interpretation of Section 110(c) of the Federal Mine Safety and Health Act of 1977 (Mine Act), 30 U.S.C. 820(c), as it relates to agents of Limited Liability Companies (LLCs). The Interpretive Bulletin is considered an interpretive rule and provides an explanation of the Secretary's interpretation of Section 110(c) and the rationale supporting that interpretation. For the reasons set forth below, the Secretary's interpretation is that Section 110(c) of the Mine Act is applicable to agents of LLCs.

The effect of the Secretary's interpretation is that agents of LLCs may be held personally liable under Section 110(c) of the Mine Act if they knowingly authorize, order, or carry out a violation of any mandatory health or safety standard under the Act or a violation of or failure or refusal to comply with any order issued under the Act or any order incorporated in a final decision issued under certain provisions of the Act.

DATES: The Interpretive Bulletin takes effect on July 10, 2006.

FOR FURTHER INFORMATION CONTACT: Patricia W. Silvey, Acting Director, Office of Standards, Regulations, and Variances, MSHA, 1100 Wilson Boulevard, Room 2350, Arlington, VA 22209–3939. Ms. Silvey can be reached at *Silvey.Patricia@DOL.GOV.* (Internet E-mail), (202) 693–9440 (voice), or (202) 693–9441 (facsimile).

To subscribe to the MSHA listserve and receive automatic notification of MSHA **Federal Register** publications, visit the site at *http://www.msha.gov/subscriptions/subscribe.aspx.*

SUPPLEMENTARY INFORMATION

Discussion of the Interpretive Bulletin and the Comments Received

On May 9, 2006, the Secretary of Labor published an Interpretive Bulletin setting forth a statement of her interpretation of Section 110(c) of the Federal Mine Safety and Health Act of 1977 (Mine Act), 30 U.S.C. 820(c), as it relates to agents of Limited Liability Companies (LLCs). 71 FR 26982 (May 9, 2006). The Interpretive Bulletin is reproduced below, with procedural details that are no longer applicable deleted. As explained in the Interpretive Bulletin, the Secretary's interpretation is that Section 110(c) is applicable to agents of LLCs.

As stated in the Interpretive Bulletin, the Secretary believes that the position set forth in the Interpretive Bulletin represents an ''interpretive rule'' as that term is used in the Administrative Procedure Act, and is therefore not required to go through notice-and-comment rulemaking. *See* 71 FR at 26982 (citing 5 U.S.C. 553(b)(3)(A) and *AMC* v. *MSHA,* 995 F.2d 1106, 1108–13 (D.C. Cir. 1993)). *See also Central Texas Telephone Cooperative, Inc.* v. *FCC,* 402 F.3d 205, 210–14 (D.C. Cir. 2005); *Orengo Caraballo* v. *Reich,* 11 F.3d 186, 194–96 (D.C. Cir. 1993): *United Technologies Corp.* v. *EPA,* 821 F.2d 714, 718–20 (D.C. Cir. 1987). Exercising her discretion to do so, however, the Secretary solicited comments on the Interpretive Bulletin.

The Secretary received comments from three commenters. The Secretary has carefully reviewed the comments, and has determined that they identify no considerations that militate against the conclusion that the Secretary's interpretation of Section 110(c) is both permissible and reasonable. Accordingly, the Interpretive Bulletin takes effect, as scheduled, on July 10, 2006.

All three of the commenters suggested that the Secretary's interpretation of Section 110(c) is inconsistent with the decisions of the Federal Mine Safety and Health Review Commission and the District of Columbia Circuit Court of Appeals in *Paul Shirel and Donald Guess, employed by Pyro Mining Co. (Shirel and Guess),* 15 FMSHRC 2440 (1993), *aff'd,* 52 F.3d 1123 (D.C. Cir. 1995) (unpublished). The Secretary addressed the holding in *Shirel and Guess* in the Interpretive Bulletin. As the Secretary explained, the holding in *Shirel and Guess* that Section 110(c) is inapplicable to agents of partnerships has no bearing on the question of whether Section 110(c) is applicable to agents of LLCs because partnerships, unlike LLCs, existed and were a well-known form of business organization when Congress enacted the Mine Act. *See* 71 Fed. Reg. at 26984 n. 2.

One of the commenters also suggested that the Secretary's interpretation of Section 110(c) is inconsistent with the fact that ''Section 110 of the [Mine] Act was amended as recently as 1990, by which point LLCs were a relatively common form of legal entity, and yet Congress did not see fit at that time to expand the wording of the statute.'' The Secretary believes that the action Congress took with respect to Section 110 in 1990 has no bearing on the question of whether Section 110(c) is applicable to agents of LLCs. Congressional reenactment of a statutory provision without change may sometimes indicate approval of an existing interpretation of that provision. *See Central Bank of Denver, N.A.* v. *First Interstate Bank of Denver, N.A.,* 511 U.S. 164, 185 (1994); *Lorillard* v. *Pons,* 434 U.S. 575, 580–85 (1978). Congressional reenactment indicates such approval, however, only if the interpretation took the form of a consistent judicial interpretation or an authoritative administrative interpretation, and only if there is evidence that Congress was actually aware of that interpretation. *See, e.g., Rabin* v. *Wilson-Coker,* 362 F.3d 190, 197 (2d Cir. 2004); *In re Coastal Group, Inc.,* 13 F.3d 81, 84 (3d Cir. 1994); *AFL–CIO* v. *Brock,* 835 F.2d 912, 915–16 (D.C. Cir. 1987). Indeed, the District of Columbia Circuit Court of Appeals has held that there must be evidence both that Congress was actually aware of the interpretation and that Congress affirmatively indicated approval of the interpretation. *General American Transportation Corp.* v. *ICC,* 872 F.2d 1048, 1053 (D.C. Cir. 1989), *cert. denied,* 493 U.S. 1069 (1990); *AFL–CIO,* 835 F.2d at 915–16.

In 1990, Congress merely amended Sections 110(a) and 110(b) of the Mine Act to increase the amount of the maximum civil penalties specified in those provisions. Public Law 101–508, Title III, sections 3102(1) and 3102(2), Nov. 5, 1990, 104 Stat. 1388. There was no judicial or administrative interpretation in existence in 1990 to the effect that Section 110(c) is inapplicable to agents of LLCs, and there is no evidence that Congress in any way considered the question of whether Section 110(c) is applicable to agents of LLCs.[1] Indeed, Congress' action in 1990 cannot meaningfully be said to have been a reenactment of Section 110(c) at all. Congress' amendment of Sections 110(a) and 110(b) had nothing to do with Section 110(c) or any other provision of the Mine Act, and was instead part of an omnibus budget reconciliation act that adjusted the monetary amounts specified in numerous statutes throughout the federal government.

For the reasons set forth in the Interpretive Bulletin and above, the Secretary believes that it is both permissible and reasonable to interpret Section 110(c) as being applicable to agents of LLCs.

The Interpretive Bulletin

Introductory Statement

The Secretary of Labor is responsible for interpreting and applying statutes she is authorized to administer. More specifically, Congress delegated to the Secretary, acting through MSHA, the authority to administer the Mine Act. *See Secretary of Labor* v. *Excel Mining, LLC,* 334 F.3d 1, 5–7 (D.C. Cir. 2003); *Secretary of Labor on behalf of Wamsley* v. *Mutual Mining, Inc.*, 80 F.3d 110, 113–14 (4th Cir. 1996). The interpretation and application of statutory terms to particular factual circumstances is an ongoing process. Publication of all interpretive positions taken by the Secretary is impossible; at times, however, the Secretary has found it useful as a means of notifying the public in general, and interested segments of the public in particular, to publish an Interpretive Bulletin or other

[1] The analysis set forth above also applies to the recently enacted Miner Improvement and New Emergency Response Act of 2006 (MINER Act), Public Law 109–236, June 15, 2006, 120 Stat. 493.

documents setting forth the Secretary's interpretive positions with respect to particular provisions of statutes she administers.

The question has arisen whether Section 110(c) of the Mine Act is applicable to agents of LLCs. The LLC is a relatively new business entity which combines the limited liability provided by a corporation with the ''pass-through'' tax treatment accorded to a partnership. LLCs are like corporations in that they shield individuals from personal liability; for that reason, they raise concerns similar to those which led Congress to enact Section 110(c).

The status of LLCs under Section 110(c) has become a significant issue under the Mine Act because, in recent years, the number of mine operators organized as LLCs has steadily increased. According to MSHA records, 782 of the Nation's 7,287 active mine operators—approximately 10 percent—now identify themselves as LLCs. The actual number may be significantly greater because MSHA's mine identification forms do not list ''LLC'' as an option and many LLCs may not identify themselves as LLCs. A number of the Nation's large operators are LLCs.

The purpose of this Interpretive Bulletin is to make the public aware of the Secretary's interpretation of the applicability of Section 110(c) to agents of LLCs—an interpretation the Secretary will apply in administering and enforcing the Mine Act.

Limited Liability Companies

The LLC is a hybrid business entity first recognized in 1977 by the State of Wyoming. LLCs did not attain any significant popularity until 1988, however, when the Internal Revenue Service announced that LLCs could be taxed as partnerships despite their corporation-like liability shield. When the IRS announced in 1997 that LLCs could elect pass-through taxation without regard to the number of corporation-like characteristics they possessed, the number of LLCs grew dramatically.

Text and History of Section 110(c)

Section 110(c) of the Mine Act states as follows:

> Whenever a *corporate operator* violates a mandatory health or safety standard or knowingly violates or fails or refuses to comply with any order issued under this Act or any order incorporated in a final decision under this Act, except an order incorporated in a decision issued under Subsection (a) or Section 105(c), any director, officer, or agent *of such corporation* who knowingly authorized, ordered, or carried out such violation, failure, or refusal shall be subject to the same civil penalties, fines, and imprisonment that may be imposed upon a person under subsections (a) and (d).

30 U.S.C. 820(c) (emphases added). Section 110(c) of the Mine Act was carried over essentially unchanged from the Federal Coal Mine Health and Safety Act of 1969 (Coal Act). *See* 30 U.S.C. 819(c) (1969). The legislative history of the Mine Act, quoting from the legislative history of the Coal Act, stated:

> Civil penalties are not a part of the enforcement scheme of the Metal Act, but they have been part of the enforcement of the Coal Act since its enactment in 1969. The purpose of such civil penalties, of course, is not to raise revenues for the federal treasury, but rather, is a recognition that: '[s]ince the basic business judgments which dictate the method of operation of a coal mine are made directly or indirectly by persons at various levels of corporate structure, [the provision for assessment of civil penalties is] necessary to place the responsibility for compliance with the Act and the regulations, as well as the liability for violations on those who control or supervise the operation of coal mines as well as on those who operate them.' In short, the purpose of a civil penalty is to induce those officials responsible for the operation of a mine to comply with the Act and its standards.

S. Rep. 95–181, Federal Mine Safety and Health Act of 1977, 95th Cong. 1st Session, at 40 (quoting S. Rep. 91–411, Federal Coal Mine Health and Safety Act of 1969, 91st Cong. 1st Session, at 39).

Purpose of Section 110(c)

When a ''corporate operator'' violates a mandatory health or safety standard under the Mine Act, Section 110(c) of the Act imposes personal liability on ''any director, officer, or agent'' of the corporation who knowingly authorized, ordered, or carried out the violation. Because a corporation generally serves as a shield against personal liability, corporate directors, officers, and agents generally are not personally liable for legal violations committed by the corporation.[2] Congress' enactment of Section 110(c) reflected its concern that corporate mine operators would have a reduced incentive to comply with Mine Act standards because a corporation would shield the individuals who control and supervise the mine—the corporation's directors, officers, and agents—from personal liability. Section 110(c) imposes liability for Mine Act violations directly on the individuals responsible for the violations. As the Sixth Circuit Court of Appeals has explained:

> In a practical sense, any non-corporate mining operation is going to be relatively small, and the probability is that the decision-maker is going to fit the statutory definition of ''operator.'' In a larger, corporate structure, the decision-maker may have authority over only a part of the mining operation. [Section 110(c)] assures that this makes him no less liable for his actions. In a noncorporate structure, the sole proprietor or partners are personally liable as ''operators'' for violations; they cannot pass off these penalties as a cost of doing business as a corporation can. Therefore, the noncorporate operator has a greater incentive to make certain that his employees do not violate mandatory health or safety standards than does the corporate operator. [Section 110(c)] attempts to correct this imbalance by giving the corporate employee a direct incentive to comply with the Act.

Richardson v. *Secretary of Labor*, 689 F.2d 632, 633–34 (6th Cir. 1982), *cert. denied*, 461 U.S. 928 (1983). *Accord United States* v. *Jones*, 735 F.2d 785, 792–93 (4th Cir.) (''Congress may have believed that in a noncorporate coal mining operation the threat of criminal sanctions against the operator personally would provide a sufficient incentive to comply with the mandatory safety standards. By contrast, in a corporate mining operation, those who are in control might well be insulated from criminal responsibility, the corporation being an impersonal legal entity.''), *cert. denied*, 469 U.S. 918 (1984).

The Interpretive Issue

The threshold issue in this situation is ''whether Congress has spoken to the precise question'' of the applicability of Section 110(c) to agents of LLCs. *Chevron U.S.A. Inc.* v. *Natural Resources Defense Council, Inc.*, 467 U.S. 837, 842–43 (1984). If Congress unambiguously expressed an intent that Section 110(c) was not to apply to agents of LLCs, that is the end of the matter. *Ibid.* If the Mine Act is silent or ambiguous with respect to the question, however, an agency interpretation that Section 110(c) is applicable to agents of LLCs should be accepted as long as it is reasonable. *Ibid.*

By its terms, Section 110(c) applies when a ''corporate operator'' violates a Mine Act standard and a director, officer, or agent ''of such corporation'' knowingly authorized, ordered, or carried out the violation. The threshold issue is thus whether, in enacting Section 110(c), Congress unambiguously expressed an intent that Section 110(c) was not to apply to agents of LLCs. The Secretary believes that Congress did not express, and could not have expressed,

[2] In contrast, a partnership generally does not shield individuals from personal liability.

any intent with respect to agents of LLCs because, when Congress enacted Section 110(c), LLCs effectively did not exist.

The courts have recognized that, over time, conditions may come into existence which Congress did not contemplate when it enacted a statute, but which implicate the concerns Congress was addressing when it enacted the statute. As the Supreme Court stated in *Browder* v. *United States*, 312 U.S. 335 (1941):

> There is nothing in the legislative history to indicate that Congress considered the question of use by returning citizens. Old crimes, however, may be committed under new conditions. Old laws apply to changed situations. The reach of the act is not sustained or opposed by the fact that it is sought to bring new situations under its terms.

312 U.S. at 339 (footnotes omitted). *Accord Weems* v. *United States*, 217 U.S. 349, 373 (1910) (''Time works changes, brings into existence new conditions and purposes. Therefore a principle, to be vital, must be capable of wider application than the mischief which gave it birth.''). When confronted with a question of statutory application with respect to which Congress did not express or could not have expressed an intent when it enacted the statute, courts have treated the question as one the resolution of which was delegated to the agency Congress authorized to administer the statute. *See NBD Bank, N.A.* v. *Bennett*, 67 F.3d 629, 632–33 (7th Cir. 1995); *Zoelsch* v. *Arthur Andersen & Co.,* 824 F.2d 27, 33 (D.C. Cir. 1987). *See also Kauthar SDN BHD* v. *Sternberg*, 149 F.3d 659, 663–67 (7th Cir. 1998) (where resolution of the question was not delegated to any agency, the court itself filled the void created by Congressional silence by examining the underlying policy concerns), *cert. denied*, 525 U.S. 1114 (1999); *Robinson* v. *TI/US West Communications Inc.,* 117 F.3d 900, 904–07 (5th Cir. 1997) (same).

Because Congress expressed no intent with respect to agents of LLCs, the question becomes whether an interpretation that Section 110(c) is applicable to agents of LLCs is reasonable. *See Chevron,* 467 U.S. at 842–43; *Excel Mining*, 334 F.3d at 6. The Secretary believes that it is. LLCs generally create the same sort of shield against personal liability which led Congress to impose personal liability on the directors, officers, and agents of corporations. Indeed, LLCs fit within the legal definition of a ''corporation.'' *See* Black's Law Dictionary (7th ed. 1999) at 341 (a ''corporation'' is ''[a]n entity (usu. a business) having authority under law to act as a single person distinct from the shareholders who own it * * *; a group or succession of persons established in accordance with legal rules into a legal or juristic person that has legal personality distinct from the natural persons who make it up [and] exists indefinitely apart from them * * *''). *See also* Webster's Third New International Dictionary (2002) at 510 (a ''corporation'' is ''a group of persons * * * treated by the law as an individual or unity having rights and liabilities distinct from those of the persons * * * composing it * * *''). Significantly, a number of LLCs in the mining industry are the sort of relatively large and corporately structured entities which Congress had in mind when it enacted Section 110(c). The Secretary believes that the underlying objective Congress identified when it enacted the Coal Act in 1969 and reiterated when it enacted the Mine Act in 1977—to place responsibility for compliance and liability for violations ''on those who control or supervise the operation of * * * mines as well as on those who operate them''—will best be advanced if Section 110(c) is interpreted as being applicable to agents of LLCs.

For all of the foregoing reasons, the Secretary believes that the interpretation set forth in this Interpretive Bulletin is permissible under the Mine Act, and that it will advance the Act's objectives in cases involving LLCs by imposing legal liability on those individuals within the LLC who actually make the decisions with regard to safety and health in the mine.[3]

Dated: June 30, 2006.

David G. Dye,

Acting Assistant Secretary for Mine Safety and Health.

[FR Doc. E6–10666 Filed 7–7–06; 8:45 am]

BILLING CODE 4510–43–P

[3] The Secretary recognizes that Section 110(c) has been held not to apply to agents of partnerships because, by its terms, Section 110(c) applies only to agents of corporations. *Paul Shirel and Donald Guess, employed by Pyro Mining Co.,* 15 FMSHRC 2440 (1993), *aff'd*, 52 F.3d 1123 (D.C. Cir. 1995) (unpublished). That holding has no bearing in this situation, however, because partnerships, unlike LLCs, existed and were a well-known form of business organization when Congress enacted the Mine Act.

The Secretary does not address in this Interpretive Bulletin whether Section 110(c) is applicable to agents of non-traditional business entities other than LLCs. The Secretary will address the applicability of Section 110(c) to the agents of such entities as the question arises.

NATIONAL FOUNDATION FOR THE ARTS AND THE HUMANITIES

National Endowment for the Arts

Submission for OMB Review; Comment Request

July 3, 2006.

The National Endowment for the Arts (NEA) has submitted the following public information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 [Pub. L. 104–13, 44 U.S.C. chapter 35] Copies of this ICR, with applicable supporting documentation, may be obtained by calling the National Endoment for the Arts' Director for Guidelines & Panel Operations, Jillian Miller, at 202/682–5004. Individuals who use a telecommunications device for the deaf (TTY/TDD) may call 202/682–5496 between 10 a.m. and 4 p.m. Eastern time, Monday through Friday.

Comments should be sent to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for the National Endowment for the Arts, Office of Management and Budget, Room 10235, Washington, DC 20503 202/395–7316, within 30 days from the date of this publication in the **Federal Register.**

The Office of Management and Budget is particularly interested in comments which:

Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used.

Enhance the quality, utility, and clarity of the information to be collected; and minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques, or other forms of information technology, *e.g.,* permitting electronic submissions of responses.

SUPPLEMENTARY INFORMATION:

Agency: National Endowment for the Arts.

Title: Panelist Profile Form.

Freguency: Every three years.

Affected Public: Individuals.

Estimated Number of Respondents: 250.

Total Burden Hours: 25.

Total Annualized Capital/Start Up Costs: 0.

Total Annual Costs (Operating/Maintaining Systems or Purchasing Services): 0.

The National Endowment for the Arts enriches our nation and its diverse cultural heritage by supporting works of artistic excellence, advancing learning in the arts, and strengthening the arts in communities throughout the country.

With the advice of the National Council on the Arts and advisory panels, and Chairman establishes eligibility requirements and criteria for the review of applications for funding. Section 959(c) of the Endowment's enabling legislation, as amended, directs the Chairman to utilize advisory panels to review applications and to make recommendations to the National Council on the Arts, which in turn makes recommendations to the Chairman.

The legislation requires the Chairman ''(1) To ensure that all panels are composed, to the extent practicable, of individuals reflecting a wide geographic, ethnic, and minority representation as well as to (2) ensure that all panels include representation of lay individuals who are knowledgeable about the arts * * *'' In addition, the membership of each panel must change substantially from year to year and each individual is ineligible to serve on a panel for more than 3 consecutive years. To assist with efforts to meet these legislated mandates regarding representation on advisory panel, the endowment has established an Automated Panel Bank System (APBS), a computer database of names, addresses, areas of expertise and other basic information on individuals who are qualified to serve as panelists for the Arts Endowment.

The Panelist Profile Form, for which clearance is requested, is used to gather basic information from qualified individuals recommended by the arts community; arts organizations; Members of Congress; the general public; local, State, and regional arts organizations; Endowment staff; and others.

Murray Welsh,

Director, Administrative Services, National Endowment for the Arts.

[FR Doc. 06–6058 Filed 7–7–06; 8:45 am]

BILLING CODE 7536–01–M

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Nuclear Waste; Notice of Meeting

The Advisory Committee on Nuclear Waste (ACNW) will hold its 172nd meeting on July 17–20, 2006, Room T–2B3, 11545 Rockville Pike, Rockville, Maryland.

The schedule for this meeting is as follows:

Monday, July 17, 2006

8:30 a.m.–8:35 a.m.: Opening Statement (Open)—The ACNW Chairman will make opening remarks regarding the conduct of the meeting.

8:35 a.m.–9:30 a.m.: U.S. Department of Energy (DOE) Briefing on Exploratory Drilling of Aeromagnetic Anomalies in the Yucca Mountain Region (Open)—A DOE representative will present an evaluation of the results of this drilling which has been done in support of the ongoing update of the 1996 expert elicitation on Probabilistic Volcanic Hazard Analysis.

9:45–11:45 a.m.: NRC Staff Review of Revised International Commission on Radiological Protection (ICRP) Recommendations (Open)—Briefing by and discussions with NRC staff representatives regarding their review of the June 5, 2006, ICRP report titled ''Draft Recommendations of the International Commission on Radiological Protection.''

2 p.m.–3 p.m.: Exchange of Information between NMSS Management and ACNW Members (Open)—NMSS management will brief the Committee about the upcoming office reorganization. ACNW staff will brief NMSS management about the revised action plan and how it reflects recent Staff Requirements Memoranda (SRMs).

3 p.m.–5 p.m.: Discussion of Draft ACNW Letter Reports (Open)—The Committee will discuss proposed ACNW letters.

Tuesday, July 18, 2006

ACNW Working Group Meeting (WGM) on predicting the performance of Cementitious Barriers for Near Surface Disposal (Open).

8:30 a.m.–8:45 a.m.: Opening Remarks and Introductions—The ACNW Chairman, Dr. Michael Ryan will make opening remarks regarding the conduct of today's sessions. ACNW Vice Chairman Allen Croff will provide an overview of the WGM, including the meeting purpose and scope, and introduce invited subject matter experts.

Session I: Where Are Cementitious Materials Used and How Are They Important to Performance Assessment?

8:45 a.m.–9:15 a.m.: Use of Cementitious Materials to Dispose of Wastes Determined to be Non-HLW (Dr. Christine A. Langton Savannah River National Lab, SRNL)—Dr. Langton will discuss cementitious waste forms and cement types and environments.

9:15 a.m.–9:45 a.m.: What Functions do Cementitious Materials Perform that are Important to Assessing System Performance (i.e., What do we Want Grouts to do?) (Professor David Kosson, Vanderbilt University)—Professor Kosson will discuss the functions of cementitious materials; e.g., control water infiltration, control Eh of infiltrating water, and prevent subsidence.

9:45 a.m.–10:15 a.m.: Panel Discussion (All)—Vice Chairman Croff will moderate a panel discussion of Session I topics by the Committee members and invited subject matter experts.

Session II: How Can Grouts Fail and What Can Cause Grout Failure?

10:30 a.m.–11:15 a.m.: Failure Processes and Mechanisms (Dr. Rachel Detwiler, Braun Intertec Corporation)—Dr. Detwiler will discuss failure processes and mechanisms of cementitious materials.

11:15 a.m.–12 p.m.: Causes of Failure of Cementitious Materials (Professor Barry Sheetz, Pennsylvania State University)—Professor Sheetz will discuss specific causes that are important to failure of cementitious materials.

12 p.m.–12:30 p.m.: Panel Discussion—Vice Chairman Croff will moderate a panel discussion of Session II topics by the Committee members and invited subject matter experts.

Session III: State-of-the-Art in Long-Term Prediction of Cementitious Material Performance

1:15 p.m.–2:15 p.m.: Current Capability to Predict the Conditions and Processes Important to Cement Failure (Professor Fred Glasser, Aberdeen University, UK)—Professor Glasser will discuss current capability to predict the conditions and processes important to cement failure, and the affect of failures on cement performance, based on modern experience, experiment, and observation.

2:15 p.m.–2:45 p.m.: Current Capability to Predict the Conditions and Processes Important to Cement

Failure (Dr. Leslie Dole, Oak Ridge National Lab, ORNL)—Dr. Dole will discuss current capability to predict the conditions and processes important to cement failure, and the affect of failures on cement performance, based on archeological evidence obtained from ancient cementitious materials and natural analogues.

3 p.m.–4 p.m.: Current Capability to Predict the Conditions and Processes Important to Cement Failure (Dr. Ed Garboczi, National Institute of Standards and Technology, NIST)—Dr. Garboczi will discuss current capability to predict the conditions and processes important to cement failure, and the affect of failures on cement performance, based on computation.

4 p.m.–4:30 p.m.: Panel Discussion—Vice Chairman Croff will moderate a panel discussion of Session III topics by the Committee members and invited subject matter experts.

Session IV: Wrap-Up

4:30 p.m.–5 p.m.: Comprehensive Roundtable Discussion—Vice Chairman Croff will moderate a comprehensive roundtable discussion of the WGM topics by the Committee members and invited subject matter experts.

5 p.m.–5:30 p.m.: Path Forward (Committee Members and ACNW Staff)—Vice Chairman Croff will moderate a discussion of the path forward on cementitious materials by the Committee members and ACNW staff.

Wednesday, July 19, 2006

8:30 a.m.–8:35 a.m.: Opening Remarks by the ACNW Chairman (Open)—The Chairman will make opening remarks regarding the conduct of today's sessions.

8:35 a.m.–10 a.m.: NRC Draft Rule/ Guidance on Preventing Legacy Sites (Open)—NMSS staff will present preliminary plans for development of requirements and guidance for the scheduled rulemaking on prevention of legacy sites.

10:15 a.m.–12:15 a.m.: Expanded Potential NRC Use of the Center for Nuclear Waste Regulatory Analysis (CNWRA) Expertise (Closed)—The Committee will meet with representatives of the Offices of Nuclear Material Safety and Safeguards (NMSS), Nuclear Regulatory Research (RES), and Nuclear Reactor Regulation (NRR) and discuss these Offices' assessments of potential expanded use of the CNWRA expertise.

Note: This portion of the meeting will be closed pursuant 5 U.S.C. 552b (c) (2) and (6) to discuss organizational and personnel matters that relate solely to internal personnel rules and practices of the Agency, and information the release of which would constitute a clearly unwarranted invasion of personal privacy.

1 p.m.–5:30 p.m.: Discussion of Potential ACNW Letter Reports (Open)—The Committee will discuss proposed ACNW letters.

Thursday, July 20, 2006

8 a.m.–8:05 a.m.: Opening Remarks by the ACNW Chairman (Open)—The Chairman will make opening remarks regarding the conduct of today's sessions.

8:05 a.m.–10:15 a.m.: U.S. Department of Energy (DOE) Briefing on Advanced Fuel Cycle Initiative (AFCI) (Open)—DOE representatives and supporting national laboratories will brief the Committee on AFCI processes and technologies. DOE's AFCI mission is to develop proliferation-resistant spent fuel treatment and transmutation technologies to enable transition from once-through fuel cycle to a closed fuel cycle.

10:30 a.m.–12:30 p.m.: Standard Review Plan for Activities Related to U.S. Department of Energy Waste Determinations (Open)—NMSS staff will address specific topics, comments, and questions identified by the Committee in their review of the draft ''Standard Review Plan for Activities Related to U.S. Department of Energy Waste Determinations'' (NUREG–1854).

1:30 p.m.–3 p.m.: RES/NMSS Dry Cask Storage Probabilistic Risk Assessment (PRA) Study (Open)—RES and NMSS representatives will present their draft final report ''A Pilot Probabilistic Risk Assessment of a Dry Cask Storage System at a Nuclear Plant,'' as well as address its future applicability not only for other storage systems but as guidance for assessing risk to the public and identifying dominant contributors to risk.

3:15 p.m.–4:45 p.m.: Electric Power Research Institute (EPRI) Dry Cask Storage Probabilistic Risk Assessment Study (Open)—An EPRI representative will address the Committee with the methodology, results, conclusions and proposed applicability of their study: EPRI Report #1009691, ''Probabilistic Risk Assessment (PRA) of Bolted Storage Casks.''

4:45 p.m.–5:30 p.m.: Discussion of Potential ACNW Letter Reports (Open)—The Committee will continue discussion of proposed ACNW reports.

5:30 p.m.–6 p.m.: Miscellaneous (Open)—The Committee will discuss matters related to the conduct of ACNW activities and specific issues that were not completed during previous meetings, as time and availability of information permit. Discussions may include future Committee Meetings.

Procedures for the conduct of and participation in ACNW meetings were published in the **Federal Register** on October 11, 2005 (70 FR 59081). In accordance with these procedures, oral or written statements may be presented by members of the public. Electronic recordings will be permitted only during those portions of the meeting that are open to the public. Persons desiring to make oral statements should notify Mr. Antonio F. Dias (Telephone 301–415–6805), between 8:15 a.m. and 5 p.m. ET, as far in advance as practicable so that appropriate arrangements can be made to schedule the necessary time during the meeting for such statements. Use of still, motion picture, and television cameras during this meeting will be limited to selected portions of the meeting as determined by the ACNW Chairman. Information regarding the time to be set aside for taking pictures may be obtained by contacting the ACNW office prior to the meeting. In view of the possibility that the schedule for ACNW meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should notify Mr. Dias as to their particular needs.

In accordance with subsection 10(d) Public Law 92–463, I have determined that it is necessary to close portions of this meeting noted above to discuss organizational and personnel matters that relate solely to internal personnel rules and practices of ACNW, and information the release of which would constitute a clearly unwarranted invasion of personal privacy.

Further information regarding topics to be discussed, whether the meeting has been canceled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted, therefore can be obtained by contacting Mr. Dias.

ACNW meeting agenda, meeting transcripts, and letter reports are available through the NRC Public Document Room (PDR) at *pdr@nrc.gov*, or by calling the PDR at 1–800–397–4209, or from the Publicly Available Records System component of NRC's document system (ADAMS) which is

accessible from the NRC Web site at *http://www.nrc.gov/reading-rm/adams.html* or *http://www.nrc.gov/reading-rm/doc-collections/* (ACRS & ACNW Mtg schedules/agendas).

Video Teleconferencing service is available for observing open sessions of ACNW meetings. Those wishing to use this service for observing ACNW meetings should contact Mr. Theron Brown, ACNW Audiovisual Technician (301–415–8066), between 7:30 a.m. and 3:45 p.m. ET, at least 10 days before the meeting to ensure the availability of this service. Individuals or organizations requesting this service will be responsible for telephone line charges and for providing the equipment and facilities that they use to establish the video teleconferencing link. The availability of video teleconferencing services is not guaranteed.

Dated: July 3, 2006.

Annette L. Vietti-Cook,

Secretary of the Commission.

[FR Doc. E6–10708 Filed 7–7–06; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Nuclear Waste; Meeting on Planning And Procedures; Notice of Meeting

The Advisory Committee on Nuclear Waste (ACNW) will hold a Planning and Procedures meeting on July 17, 2006, Room T–2B1, 11545 Rockville Pike, Rockville, Maryland. The entire meeting will be open to public attendance, with the exception of a portion that may be closed pursuant to 5 U.S.C. 552b(c)(2) and (6) to discuss organizational and personnel matters that relate solely to internal personnel rules and practices of ACNW, and information the release of which would constitute a clearly unwarranted invasion of personal privacy.

The agenda for the subject meeting shall be as follows:

Monday, July 17, 2006—1 p.m.–2 p.m.

The Committee will discuss proposed ACNW activities and related matters. The purpose of this meeting is to gather information, analyze relevant issues and facts, and formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Members of the public desiring to provide oral statements and/or written comments should notify the Designated Federal Official, Mr. Antonio F. Dias (Telephone: (301) 415–6805) between 8:15 a.m. and 5 p.m. (ET) five days prior to the meeting, if possible, so that appropriate arrangements can be made. Electronic recordings will be permitted only during those portions of the meeting that are open to the public.

Further information regarding this meeting can be obtained by contacting the Designated Federal Official between 8:15 a.m. and 5 p.m. (ET). Persons planning to attend this meeting are urged to contact the above named individual at least two working days prior to the meeting to be advised of any potential changes in the agenda.

Dated: June 30, 2006.

Michael R. Snodderly,

Branch Chief, ACRS/ACNW.

[FR Doc. E6–10709 Filed 7–7–06; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon written request, copies available from: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Extension:

Rule 11a–2; SEC File No. 270–267; OMB Control No. 3235–0272.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) the Securities and Exchange Commission (''Commission'') is soliciting comments on the collections of information summarized below. The Commission plans to submit these existing collections of information to the Office of Management and Budget (''OMB'') for extension and approval.

The title for the collection of information is ''Rule 11a–2 Under the Investment Company Act of 1940: Offers of Exchange by Certain Registered Separate Accounts or Others the Terms of Which Do Not Require Prior Commission Approval.''

Rule 11a–2 (17 CFR 270.11a–2) under the Investment Company Act of 1940 (15 U.S.C. 80a–1 *et seq.*) permits certain registered insurance company separate accounts, subject to certain conditions, to make exchange offers without prior approval by the Commission of the terms of those offers. Rule 11a–2 requires disclosure, in certain registration statements filed pursuant to the Securities Act of 1933 (15 U.S.C. 77a *et seq.*) of any administrative fee or sales load imposed in connection with an exchange offer.

There are currently 736 registrants governed by Rule 11a–2. The Commission includes the estimated burden of complying with the information collection required by Rule 11a–2 in the total number of burden hours estimated for completing the relevant registration statements and reports the burden of Rule 11a–2 in the separate PRA submissions for those registration statements (see the separate PRA submission for Form N–3 (17 CFR 274.11b), Form N–4 (17 CFR 274.11c) and Form N–6 (17 CFR 274.11d)). The Commission is requesting a burden of one hour for Rule 11a–2 for administrative purposes.

The estimate of average burden hours is made solely for the purposes of the Paperwork Reduction Act, and is not derived from a comprehensive or even a representative survey or study of the costs of Commission rules or forms. With regard to Rule 11a–2, the Commission includes the estimate of burden hours in the total number of burden hours estimated for completing the relevant registration statements and reported on the separate PRA submissions for those statements (see the separate PRA submissions for Form N–3, Form N–4 and Form N–6). The information collection requirements imposed by Rule 11a–2 are mandatory. Responses to the collection of information will not be kept confidential.

Written comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the Commission, including whether the information has practical utility; (b) the accuracy of the Commission's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to R. Corey Booth, Director/Chief Information Officer, C/O Shirley Martinson, 6432 General Green Way, Alexandria, Virginia 22312 or send an e-mail to: *PRA_Mailbox@sec.gov*.

Dated: June 20, 2006.

Nancy M. Morris,

Secretary.

[FR Doc. 06–6065 Filed 7–7–06; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–27418]

Notice of Applications for Deregistration Under Section 8(f) of the Investment Company Act of 1940

June 30, 2006.

The following is a notice of applications for deregistration under section 8(f) of the Investment Company Act of 1940 for the month of June 2006. A copy of each application may be obtained for a fee at the SEC's Public Reference Branch (tel. 202–551–5850). An order granting each application will be issued unless the SEC orders a hearing. Interested persons may request a hearing on any application by writing to the SEC's Secretary at the address below and serving the relevant applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on July 25, 2006, and should be accompanied by proof of service on the applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Secretary, U.S. Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

FOR FURTHER INFORMATION CONTACT: Diane L. Titus at (202) 551–6810, SEC, Division of Investment Management, Office of Investment Company Regulation, 100 F Street, NE., Washington, DC 20549–4041.

Credit Suisse Target Return Fund [File No. 811–21617]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. By May 17, 2006, applicants' sole shareholder had redeemed its shares at net asset value. Expenses of $2,500 incurred in connection with the liquidation were paid by applicant's investment adviser, Credit Suisse Asset Management, LLC, or its sister companies.

Filing Dates: The application was filed on May 24, 2006, and amended on June 27, 2006.

Applicant's Address: 466 Lexington Ave., New York, NY 10017–3140.

Gold Bank Funds [File No. 811–10465]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On February 17, 2006 and April 7, 2006, applicant made liquidating distributions to its shareholders, based on net asset value. Expenses of $33,197 incurred in connection with the liquidation were paid by applicant and its investment advisers, Gold Capital Management, Inc. and M&I Investment Management Corp.

Filing Dates: The application was filed on June 2, 2006, and amended on June 27, 2006.

Applicant's Address: 6860 W. 115th, Suite 100, Overland Park, KS 66211.

The Galaxy Fund [File No. 811–4636]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On November 21, 2005 and November 23, 2005, applicant transferred its assets to corresponding portfolios of Columbia Funds Series Trust, based on net asset value. Expenses of $936,930 incurred in connection with the reorganization were paid by Columbia Management Advisors, LLC, applicant's investment adviser.

Filing Dates: The application was filed on April 20, 2006, and amended on June 22, 2006.

Applicant's Address: One Financial Center, Boston, MA 02111.

The BlackRock Advantage Term Trust Inc. [File No. 811–5757]

Summary: Applicant, a closed-end investment company, seeks an order declaring that it has ceased to be an investment company. On December 29, 2005, applicant made a liquidating distribution to its shareholders, based on net asset value. Expenses of $18,500 incurred in connection with the liquidation were paid by applicant. Applicant has transferred $300,000 in cash to a liquidating trust to pay applicant's remaining liabilities. The trustees of the liquidating trust intend to distribute any remaining cash to applicant's former shareholders within one year of the liquidation.

Filing Date: The application was filed on May 15, 2006.

Applicant's Address: 100 Bellevue Parkway, Wilmington, DE 19809.

Income Trust [File No. 811–7307]

Growth and Income Trust [File No. 811–7393]

Growth Trust [File No. 811–7395]

Summary: Each applicant, a master fund in a master/feeder arrangement, seeks an order declaring that it has ceased to be an investment company. Between October 18, 2005 and March 9, 2006, each applicant's shareholders redeemed all their shares at net asset values. Expenses of $14,670, $19,560 and $9,780, respectively, incurred in connection with the liquidations were paid by Ameriprise Financial, Inc., applicants' investment adviser.

Filing Date: The applications were filed on May 24, 2006.

Applicant's Address: 901 Marquette Ave. South, Suite 2810, Minneapolis, MN 55402–3268.

Allmerica Securities Trust [File No. 811–2338]

Summary: Applicant, a closed-end investment company, seeks an order declaring that it has ceased to be an investment company. On May 12, 2006, applicant made a liquidating distribution to its shareholders, based on net asset value. The Bank of New York, applicant's paying agent, is holding the remaining fund assets for distribution to shareholders holding share certificates. Any liquidating distributions not claimed by a certificated shareholder will be escheated by the paying agent in accordance with relevant state law. Expenses of approximately $155,000 incurred in connection with the liquidation have been or will be paid by applicant. Applicant has retained $132,102 in cash in a custodial account to pay for expenses relating to the liquidation and other accrued or contingent liabilities.

Filing Date: The application was filed on May 12, 2006.

Applicant's Address: 440 Lincoln St., Worcester, MA 01653.

Scudder New Asia Fund, Inc. [File No. 811–4789]

Summary: Applicant, a closed-end investment company, seeks an order declaring that it has ceased to be an investment company. On April 17, 2006, applicant transferred its assets to DWS Emerging Markets Equity Fund, a series of DWS International Fund, Inc., based on net asset value. Expenses of $332,700 incurred in connection with the reorganization were paid by applicant.

Filing Dates: The application was filed on May 11, 2006, and amended on June 9, 2006.

Applicant's Address: 345 Park Avenue, New York, NY 10154.

Meeder Advisor Funds [File No. 811–6720]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On November 13, 2003, applicant made a liquidating distribution to its shareholders, based on net asset value. Expenses of $1,465 incurred in connection with the liquidation were paid by applicant and Norwich Union Investment

Management Limited, applicant's subadviser.

Filing Dates: The application was filed on July 8, 2004, and amended on June 13, 2006.

Applicant's Address: 6125 Memorial Dr., Dublin, OH 43017.

AIM Millennium Alternative Strategies Fund [File No. 811–10299]

Summary: Applicant, a closed-end investment company, seeks an order declaring that it has ceased to be an investment company. Applicant has never made a public offering of its securities and does not propose to make a public offering or engage in business of any kind.

Filing Dates: The application was filed on March 31, 2003, and amended on May 12, 2003 and June 12, 2006.

Applicant's Address: 11 Greenway Plaza, Suite 100, Houston, TX 77046–1173.

Runkel Funds, Inc. [File No. 811–21070]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On October 20, 2005, applicant made a liquidating distribution to its shareholders, based on net asset value. Expenses of $4,087 incurred in connection with the liquidation were paid by Runkel Advisors, LLC, applicant's investment adviser, and Thomas J. Runkel, manager of applicant's investment adviser.

Filing Dates: The application was filed on December 7, 2005, and amended on February 3, 2006, March 10, 2006 and June 23, 2006.

Applicant's Address: 903 Chevy St., Belmont, CA 94002.

Legg Mason Cash Reserve Trust [File No. 811–2853]

Legg Mason Tax-Exempt Trust, Inc. [File No. 811–3526]

Summary: Each applicant seeks an order declaring that it has ceased to be an investment company. On February 28, 2006, each applicant made a liquidating distribution to its shareholders, based on net asset value. Expenses of $36,099 and $11,984, respectively, incurred in connection with the liquidations were paid by Legg Mason Fund Adviser, Inc., applicants' investment adviser.

Filing Date: The applications were filed on May 31, 2006.

Applicants' Address: 100 Light St., Baltimore, MD 21202.

Hart Life Insurance Company Separate Account One [File No. 811–9045]

Summary: Applicant, a separate account for variable annuities, seeks an order declaring that it has ceased to be an investment company. Applicant has never made a public offering of its securities, does not propose to make a public offering, and has never had any contractowners invested in the separate account.

Filing Date: The application was filed on April 25, 2006.

Applicant's Address: P.O. Box 2999, Hartford, CT 06104.

Hart Life Insurance Company Separate Account Two [File No. 811–9047]

Summary: Applicant, a separate account for variable life insurance, seeks an order declaring that it has ceased to be an investment company. Applicant has never made a public offering of its securities, does not propose to make a public offering, and has never had any contractowners invested in the separate account.

Filing Date: The application was filed on April 25, 2006.

Applicant's Address: P.O. Box 2999, Hartford, CT 06104.

ReliaStar Life Insurance Company of New York Variable Annuity Separate Account II [File No. 811–8965]

Summary: Applicant, a separate account for variable annuities, seeks an order declaring that it has ceased to be an investment company. Applicant has never made and does not propose to make a public offering of its securities, and it has never had any contractowners invested in the separate account.

Filing Dates: The application was filed on February 6, 2006, and amended on June 1, 2006.

Applicant's Address: 1000 Woodbury Road, Woodbury, New York 11797.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Nancy M. Morris,

Secretary.

[FR Doc. E6–10683 Filed 7–7–06; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–54085; File No. 10–131]

Order Modifying a Condition to Operation as a National Securities Exchange of the Nasdaq Stock Market LLC

June 30, 2006.

I. Introduction

On January 13, 2006, the Securities and Exchange Commission (''Commission'') granted registration of the Nasdaq Stock Market LLC (''Nasdaq Exchange'') as a national securities exchange.[1] At the same time, the Commission conditioned the Nasdaq Exchange's operation as an exchange on the satisfaction of six specific requirements. The Commission is modifying in this Order the condition requiring the NASD to represent to the Commission that it no longer needs to control the Nasdaq Stock Market, Inc. (''Nasdaq''), the Nasdaq Exchange's parent company, through the Preferred D share because the NASD can fulfill through other means its obligations with respect to non-Nasdaq exchange listed securities under Section 15A(b)(11) of the Securities Exchange Act of 1934 (''Exchange Act''),[2] Rules 602 and 603 of Regulation NMS,[3] and the national market system plans in which it participates (the ''Control Share Condition''). This condition reflected the Nasdaq Exchange's intent to begin trading at the same time Nasdaq UTP Plan Securities and CTA Plan Securities.[4]

The Nasdaq Exchange would now prefer to commence trading Nasdaq UTP Plan Securities and CTA Plan Securities in two separate phases. Accordingly, by letter dated March 31, 2006, the Nasdaq Exchange requested that the Commission modify the Control Share Condition to allow it to begin operating as an exchange with regard to Nasdaq UTP Plan Securities before the Control Share Condition is satisfied.[5] As discussed further below, the Commission is granting the Nasdaq Exchange's request. Until the Control Share Condition is satisfied, however, the NASD must retain control of Nasdaq through the Preferred D share, and Nasdaq must continue to perform obligations under the NASD's Plan of Allocation and Delegation of Functions by NASD to Subsidiaries (''Delegation

[1] *See* Exchange Act Release No. 53128, 71 FR 3550 (January 23, 2006) (''Nasdaq Exchange Order'').

[2] 15 U.S.C. 78*o*–3(b)(11).

[3] 17 CFR 242.602 and 603.

[4] Transactions are reported pursuant to two national market system plans: Nasdaq-listed securities are reported to the Joint Self-Regulatory Organization Plan Governing the Collection, Consolidation and Dissemination of Quotation and Transaction Information for Nasdaq-Listed Securities Traded on Exchanges on an Unlisted Trading Privileges Basis (''Nasdaq UTP Plan Securities''); securities listed on other national securities exchanges are reported to the Consolidated Transaction Association Plan (''CTA Plan Securities''). Approximately 40 securities are dually-listed on Nasdaq and the New York Stock Exchange LLC. Transactions in these securities are reported to the CTA Plan and thus are CTA Plan Securities.

[5] *See* letter to Nancy M. Morris, Secretary, Commission, from Edward S. Knight, Executive Vice President and General Counsel, Nasdaq, dated March 31, 2006.

Plan'') with respect to CTA Plan Securities. Satisfaction of the condition would continue to be a prerequisite to the Nasdaq Exchange trading CTA Plan Securities.

II. Discussion

As discussed in the Nasdaq Exchange Order,[6] the NASD plans to remain a member of the Intermarket Trading System (''ITS Plan'') for the purpose of providing access to over-the-counter (''OTC'') quotes in CTA Plan Securities communicated by its members through NASD facilities and to provide its members access to exchanges' quotes in such securities. The Control Share Condition is necessary because the NASD and its members currently comply with their obligations under the ITS Plan through the NASD's Nasdaq Market Center facility.

In addition, with respect to CTA Plan Securities, NASD facilities owned by Nasdaq currently are the NASD's only means available to fulfill its obligations under Exchange Act Rules 602 and 603,[7] the CTA Plan, CQ Plan, and Section 15A(b)(11) of the Exchange Act.[8] Therefore, the NASD must have the means to satisfy these obligations prior to relinquishing control of Nasdaq.

The Nasdaq Exchange represented that the technology solutions to allow the NASD to fulfill its obligations with respect to CTA Plan Securities through means that would not involve a delegation of regulatory authority to Nasdaq are not completed.[9] In addition, the Nasdaq Exchange represented that many of its prospective members have indicated that a phased-in approach to the Nasdaq Exchange's operation would be preferable. Specifically, according to the Nasdaq Exchange, these firms believe that a single-day transition would entail unnecessary costs and administrative burdens and pose transition risks that could be mitigated through a phased approach.

The Commission believes that a phased-in implementation of the operation of the Nasdaq Exchange is consistent with the Exchange Act and may allow for a more smooth transition. Accordingly, the Commission believes that it is necessary or appropriate in the public interest, consistent with the protection of investors and consistent with the requirements of Exchange Act, and the rules and regulations thereunder applicable to Nasdaq Exchange to modify the Control Share Condition to the Nasdaq Exchange Order as follows:

First, the requirement that the NASD represent that ''control of Nasdaq through the Preferred D share is no longer necessary because the NASD can fulfill through other means its obligations with respect to [CTA Plan Securities] under Section 15A(b)(11) of the Exchange Act,[10] Rules 602 and 603 of Regulation NMS,[11] and the national market system plans in which the NASD participates'' is modified so as to be a condition only with respect to the Nasdaq Exchange commencing to trade CTA Plan Securities. This will allow the Nasdaq Exchange to begin operations as a national securities exchange solely for Nasdaq UTP Plan securities before the Control Share Condition is satisfied.

Second, the Control Share Condition is modified to permit the Nasdaq Exchange to commence trading Nasdaq UTP Plan Securities once Nasdaq is no longer delegated regulatory authority under the Delegation Plan with respect to such securities. The modification of the Control Share Condition described above means that the Nasdaq Exchange would commence trading in Nasdaq UTP Plan Securities while the NASD controls Nasdaq. The Commission believes, however, that it would be inappropriate for the Nasdaq Exchange to commence trading in Nasdaq UTP Plan Securities while its parent company continued to be delegated regulatory authority by the NASD with respect to the same activities. Accordingly, the Commission would have to approve an amendment to the NASD's Delegation Plan to reflect that Nasdaq would no longer be delegated regulatory authority with regard to Nasdaq UTP Securities prior to the Nasdaq Exchange commencing to trade Nasdaq UTP Plan Securities.

III. Modification of Conditions to Operation

The Commission notes that all of the other conditions set forth in the Nasdaq Exchange Order remain and must be satisfied before the Nasdaq Exchange can begin operations as an exchange.

The Commission hereby replaces the Control Share Condition to operation of the Nasdaq Exchange as a national securities exchange as follows:

B. The NASD's Ability To Fulfill Its Statutory and Regulatory Obligations

(1) With respect to the Nasdaq Exchange commencing to trade securities reported pursuant to the Nasdaq UTP Plan, the NASD's Delegation Plan is amended to eliminate Nasdaq's exercise of regulatory authority with respect to such securities.

(2) With respect only to the Nasdaq Exchange commencing to trade securities reported pursuant to the CTA Plan, the NASD must represent to the Commission that control of Nasdaq through the Preferred D share is no longer necessary because the NASD can fulfill through other means its obligations with respect to securities reported to the CTA Plan under Section 15A(b)(11) of the Exchange Act, Rules 602 and 603 of Regulation NMS, and the national market system plans in which the NASD participates.

IV. Conclusion

It is ordered that the Control Share Condition to operation for the Nasdaq Exchange is modified as described herein.

By the Commission.

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. E6–10712 Filed 7–7–06; 8:45 am]

BILLING CODE 8010–01–P

[6] *See* Nasdaq Exchange Order, *supra* note 1.

[7] 17 CFR 242.602 and 603.

[8] 15 U.S.C. 78*o*–3(b)(11).

[9] The Commission notes that the NASD operates the Alternative Display Facility (''ADF''), which currently collects quotes and trades for Nasdaq UTP Plan Securities, but not for CTA Plan Securities.

[10] 15 U.S.C. 78*o*–3(b)(11).

[11] 17 CFR 242.602 and 603.

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–54081; File No. SR–Amex–2006–60]

Self-Regulatory Organizations; America Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to the Extension of the Pilot Period Applicable to the Listing and Trading of Options on the iShares MSCI Emerging Markets Index

June 30, 2006.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 20, 2006, the American Stock Exchange LLC (''Amex'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Amex has filed the proposed rule change, pursuant to section 19(b)(3)(A)(iii) of the Act[3] and Rule 19b–4(f)(6) thereunder,[4] which renders the proposal effective upon

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(iii).

[4] 17 CFR 240.19b–4(f)(6).

filing with the Commission.[5] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to extend the pilot period applicable to Amex's the listing and trading of options on the iShares MSCI Emerging Markets Index Fund (''Fund Options''). The Amex is not proposing any textual changes to the rules of Amex. The text of the proposed rule change is available on the Amex's Web site at *http://www.amex.com*, the Office of the Secretary, Amex and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Amex included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Amex has prepared summaries, set forth in Sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

On May 17, 2006, the Commission approved the Amex's proposal to list and trade the Fund Options.[6] SR–Amex–2006–43 was approved for a sixty-day pilot period that is due to expire on July 2, 2006 (''Pilot''). The Fund Options will continue to meet substantially all of the listing and maintenance standards in Commentary .06 to Amex Rule 915 and Commentary .07 to Amex Rule 916. For the requirements that are not met, the Amex continues to represent that sufficient mechanisms exist that would provide the Amex with adequate surveillance and regulatory information with respect to the Fund Options. Continuation of the Pilot would permit the Amex to continue to work with the Bolsa Mexicana de Valores (''Bolsa'') to develop a surveillance sharing agreement.

Accordingly, the Exchange proposes to extend the Pilot for an additional ninety-days, until October 1, 2006.

2. Statutory Basis

The Amex believes the proposed rule change is consistent with section 6(b) of the Act[7] in general, and furthers the objectives of section 6(b)(5) of the Act,[8] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest; and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers, or to regulate by virtue of any authority conferred by the Act matters not related to the purpose of the Act or the administration of the Amex.

B. Self-Regulatory Organization's Statement on Burden on Competition

Amex does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to section 19(b)(3)(A) of the Act[9] and Rule 19b–4(f)(6)[10] thereunder because the proposed rule change: (i) Does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) does not become operative for 30 days from the date of the filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest pursuant to section 19(b)(3)(A)(iii) of the Act[11] and Rule 19b–4(f)(6) thereunder.[12]

Amex has requested that the Commission waive both the five-day pre-filing requirement and the 30-day delayed operative delay.[13] The Commission is exercising its authority to waive the five-day pre-filing notice requirement and believes that the waiver of the 30-day operative delay is consistent with the protection of investors and the public interest. Waiver of the five-day pre-filing and 30-day operative periods will extend the Pilot, which would otherwise expire on July 1, 2006, and allow the Amex to continue in its efforts to obtain a surveillance agreement with Bolsa. Accordingly, the Commission designates the proposal to be effective and operative upon filing with the Commission.[14]

At any time within sixty (60) days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors or otherwise in furtherance of the purposes of the Act.[15]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–Amex–2006–60 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–Amex–2006–60. This file number should be included on the subject line if e-mail is used. To help the

[5] The Exchange requested the Commission to waive the five-day pre-filing notice requirement and the 30-day operative delay, as specified in Rule 19b(f)(6)(iii). 17 CFR 240.19b–4(f)(6)(iii).

[6] *See* Securities Exchange Act Release No. 53824 (May 17, 2006), 71 FR 30003 (May 24, 2006) (SR–Amex–2006–43).

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(5).

[9] 15 U.S.C. 78s(b)(3)(A).

[10] 17 CFR 240.19b–4(f)(6).

[11] 15 U.S.C. 78s(b)(3)(A)(iii).

[12] 17 CFR 240.19b–4(f)(6).

[13] 17 CFR 240.19b–4(f)(6)(iii).

[14] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[15] *See* Section 19(b)(3)(C) of the Act, 15 U.S.C. 78s(b)(3)(C).

Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 100 F Street, NE., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of the Amex. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–Amex–2006–60 and should be submitted on or before July 31, 2006.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[16]

Nancy M. Morris,

Secretary.

[FR Doc. E6–10684 Filed 7–7–06; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–54082; File No. SR–BSE–2006–29]

Self-Regulatory Organizations; Boston Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 Thereto to Extend the Effective Date of a Previous Rule Change Relating to Information Contained in a Directed Order on the Boston Options Exchange

June 30, 2006.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 20, 2006, the Boston Stock Exchange, Inc. (''BSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the BSE. The BSE filed the proposed rule change pursuant to section 19(b)(3)(A) of the Act[3] and Rule 19b–4(f)(6) thereunder,[4] which renders the proposed rule change effective upon filing with the Commission. On June 29, 2006, the BSE filed Amendment No. 1 to the proposed rule change.[5] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

On March 17, 2006, the Exchange filed a proposed rule change to amend its rules governing its Directed Order process on Boston Stock Exchange, Inc. (''BOX'') pursuant to section 19(b)(3)(A) of the Act and Rule 19b–4(f)(6) thereunder, which rendered the proposal immediately effective upon filing with the Commission.[6] The rules were amended to clearly state that the BOX Trading Host identifies to an Executing Participant (''EP'') the identity of the firm entering a Directed Order. The amended rule was to be effective until June 30, 2006, while the Commission considered a corresponding Exchange proposal, SR–BSE–2005–52,[7] to amend the BOX rules on a permanent basis to permit EPs to choose the firms from whom they will accept Directed Orders, while providing complete anonymity of the firm entering a Directed Order.[8]

The Exchange now proposes to extend the effective date of the amended rule governing the anonymity of its Directed Order process on the BOX from June 30, 2006 to September 30, 2006 while the Commission continues to consider SR–BSE–2005–52 which would amend the BOX rules on a permanent basis to permit EPs to choose the firms from whom they will accept Directed Orders, while providing complete anonymity of the firm entering a Directed Order. In the event the Commission reaches a decision with respect to SR–BSE–2005–52 to amend the BOX rules before September 30, 2006, the amended rule governing the Exchange's Directed Order process on the BOX will cease to be effective at the time of that decision.

This rule filing proposes to extend the effective date of the amended rule governing the Exchange's Directed Order process on the BOX from June 30, 2006 to September 30, 2006.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the BSE included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The BSE has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On March 17, 2006 the BSE filed SR–BSE–2006–14, a proposed rule change seeking to amend the BOX rules to clearly state that the BOX Trading Host identifies to an EP the identity of the firm entering a Directed Order. That proposed rule change became immediately effective upon filing with the Commission pursuant to Rule 19b–4(f)(6) under the Act.[9] The rule change was to be effective until June 30, 2006, while the Commission considered a corresponding Exchange proposal, SR–BSE–2006–52, to amend the BOX rules on a permanent basis to permit EPs to choose the firms from whom they will accept Directed Orders while providing complete anonymity of the firm entering a Directed Order. This proposed rule filing seeks to extend the date of effectiveness of the amended Directed Order rule from June 30, 2006 to September 30, 2006, while the

[16] 17 CFR 200.30–3(a)(12).

[1] 5 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6).

[5] In Amendment No. 1, BSE submitted rule text that indicates that the proposed rule change will expire on September 30, 2006.

[6] *See* Securities Exchange Act Release No. 53516 (March 20, 2006), 71 FR 15232 (March 27, 2006) (SR–BSE–2006–14). At the Exchange's request, the Commission edited language in this filing to clarify that the Commission did not approve SR–BSE–2006–14, but that SR–BSE–2006–14 became immediately effective upon filing with the Commission pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(6) thereunder. Telephone conference between Jan Woo, Attorney, Division of Market Regulation, Commission, and Brian Donnelly, Assistant Vice President of Regulation and Compliance, BSE, on June 27, 2006 (''Telephone conference'').

[7] *See* Securities Exchange Act Release No. 53357 (February 23, 2006), 71 FR 10730 (March 2, 2006) (Notice of filing of Amendments No. 2, 3, and 4 to proposed rule change to modify the information contained in a Directed Order on the BOX).

[8] In the event that the issue of anonymity in the Directed Order process is not resolved by September 30, 2006, the Exchange intends to submit another filing under Rule 19b–4(f)(6) under the Act extending this rule and system process.

[9] *See* footnote 5 *supra.* Telephone conference.

Commission considers SR–BSE–2005–52 to amend the BOX rules on a permanent basis to permit EPs to choose the firms from whom they will accept Directed Orders while providing complete anonymity of the firm entering a Directed Order.

2. Statutory Basis

The amended rule is designed to clarify the information contained in a Directed Order. This proposed rule filing seeks to extend the amended rule's effectiveness from June 30, 2006 to September 30, 2006. This extension will afford the Commission the necessary time to consider SR-BSE–2005–52 which would amend the BOX rules on a permanent basis to permit EPs to choose the firms from whom they will accept Directed Orders while providing complete anonymity of the firm entering a Directed Order. Accordingly, the Exchange believes that the proposal is consistent with the requirements of section 6(b) of the Act,[10] in general, and section 6(b)(5) of the Act,[11] in particular, in that it is designed to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transaction in securities, to remove impediments to and perfect the mechanism for a free and open market and a national market system, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change, as amended: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) by its terms does not become operative for 30 days after the date of this filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to section 19(b)(3)(A)[12] of the Act and Rule 19b–4(f)(6) thereunder.[13]

A proposed rule change filed under Rule 19b–4(f)(6)[14] normally may not become operative prior to 30 days after the date of filing. However, Rule 19b–4(f)(6)(iii)[15] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The BSE requests that the Commission waive the 5-day pre-filing notice requirement and the 30-day operative delay, as specified in Rule 19b–4(f)(6)(iii),[16] which would make the rule change effective and operative upon filing. The Commission believes that waiving the 5-day pre-filing notice and the 30-day operative delay is consistent with the protection of investors and the public interest because such waiver would continue to conform the BOX rules with BOX's current practice and clarify that Directed Orders on BOX are not anonymous.[17] Accordingly, the Commission designates that the proposed rule change effective and operative upon filing with the Commission.

At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.[18]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the amended proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File No. SR–BSE–2006–29 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–BSE–2006–29. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the BSE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–BSE–2006–29 and should be submitted on or before July 31, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[19]

Nancy M. Morris,

Secretary.

[FR Doc. E6–10721 Filed 7–7–06; 8:45 am]

BILLING CODE 8010–01–P

[10] U.S.C. 78f(b).

[11] 15 U.S.C. 78f(b)(5).

[12] 15 U.S.C. 78s(b)(3)(A).

[13] 17 CFR 240.19b–4(f)(6).

[14] 17 CFR 240.19b–4(f)(6).

[15] 17 CFR 240.19b–4(f)(6)(iii).

[16] 17 CFR 240.19b–4(f)(6)(iii).

[17] For purposes only of waiving the operative delay for this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[18] The effective date of the original proposed rule is June 20, 2006. The effective date of Amendment No. 1 is June 29, 2006. For purposes of calculating the 60-day period within which the Commission may summarily abrogate the proposed rule change under Section 19(b)(3)(C) of the Act, the Commission considers the period to commence on June 29, 2006, the date on which the BSE submitted Amendment No. 1. *See* 15 U.S.C. 78s(b)(3)(C).

[19] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–54090; File No. SR–CHX–2006–22]

Self-Regulatory Organizations; Chicago Stock Exchange, Inc.; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto To Amend the CHX Holdings, Inc. Certificate of Incorporation

June 30, 2006.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 22, 2006, the Chicago Stock Exchange, Inc. (''CHX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the CHX. On June 30, 2006, the Exchange filed Amendment No. 1 to the proposed rule change.[3] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CHX is proposing, on behalf of its parent company, CHX Holdings, Inc. (''CHX Holdings''), to amend the CHX Holdings Certificate of Incorporation (the ''charter'') to: (1) Make a minor change in the ownership limitations applicable to both CHX participants and other persons or entities; and (2) increase the number of shares of common stock which CHX Holdings is authorized to issue. The text of the proposed rule change appears below. Additions are *italicized*; deletions are [bracketed].

* * * * *

CERTIFICATE OF INCORPORATION OF CHX HOLDINGS, INC.

* * * * *

Authorized Stock

FOURTH: The total number of shares of stock which the Corporation shall have authority to issue is *900,000*[750,000] shares of common stock having a par value of $.01 per share and 25,000 shares of preferred stock having a par value of $.01 per share. The Board of Directors is expressly authorized to fix by resolution any of the designations and the powers, preferences and rights and the qualifications, limitations or restrictions which are permitted by Section 151 of the General Corporation Law of Delaware in respect of any such class or classes of preferred stock or any series of any class or classes of preferred stock of the Corporation.

Limitations on Transfer, Ownership and Voting

FIFTH:

(a) No change to text.

(b) Limitations.

(i) No change to text.

(ii) For so long as the Corporation shall control, directly or indirectly, the Chicago Stock Exchange, Inc., except as provided in clause (iii) below:

(A) no Person (as defined above), either alone or together with its Related Persons (as defined above), may own, directly or indirectly, of record or beneficially shares *of stock of the Corporation representing in the aggregate* [constituting] more than forty percent (40%) of [any class of capital stock (whether common stock or preferred stock) of the Corporation] *the then outstanding votes entitled to be cast on any matter;*

(B) no Person, either alone or together with its Related Persons, who holds a trading permit of the Chicago Stock Exchange, Inc., may own, directly or indirectly, of record or beneficially shares *of stock of the Corporation representing in the aggregate* [constituting] more than twenty percent (20%) of [any class of capital stock of the Corporation] *the then outstanding votes entitled to be cast on any matter;* and

(C) No change to text.

(iii) No change to text.

(A) No change to text.

(B) No change to text.

(iv) No change to text.

(v) Notwithstanding clauses (iii)(A) and (iii)(B) above, any Person (and its Related Persons owning any capital stock of the Corporation) which proposes to own, directly or indirectly, of record or beneficially shares of [the capital] stock [(whether common stock or preferred stock)] of the Corporation *representing in the aggregate* [constituting] more than forty percent (40%) of [the outstanding shares of any class of capital stock of the Corporation] *the then outstanding votes entitled to be cast on any matter,* or to exercise voting rights, or grant any proxies or consents with respect to shares of [the capital] stock [(whether common stock or preferred stock)] of the Corporation *representing in the aggregate* [constituting] more than twenty percent (20%) of [the outstanding shares of any class of capital stock of the Corporation] *the then outstanding votes entitled to be cast on any matter,* shall have delivered to the Board of Directors of the Corporation a notice in writing, not less than forty-five (45) days (or any shorter period to which said Board shall expressly consent) before the proposed ownership of such shares, or the proposed exercise of said voting rights or the granting of said proxies or consents, of its intention to do so.

(c) Required Notices.

(i) Any Person that, either alone or together with its Related Persons, owns, directly or indirectly (whether by acquisition or by a change in the number of shares outstanding), of record or beneficially *shares of stock of the Corporation that represent* five percent (5%) or more of the then *outstanding votes entitled to be cast on any matter* [outstanding shares of capital stock of the Corporation] (excluding shares of any class of preferred stock that does not have the right by its terms to vote generally in the election of members of the Board of Directors of the Corporation) shall, immediately upon [owning] *becoming the owner of such amount of stock* [five percent (5%) or more of the then outstanding shares of such stock], give the Board of Directors written notice of such ownership, which notice shall state: (A) Such Person's full legal name; (B) such Person's title or status and the date on which such title or status was acquired; (C) such Person's approximate ownership interest of the Corporation; and (D) whether such Person has the power, directly or indirectly, to direct the management or policies of the Corporation, whether through ownership of securities, by contract or otherwise.

(ii) Each Person required to provide written notice pursuant to subparagraph (c)(i) of this Article Fifth shall update such notice promptly after any change in the contents of that notice; provided that no such updated notice shall be required to be provided to the Board of Directors in the event of an increase or decrease in the ownership percentage so reported of *shares of stock of the Corporation that represent* less than one percent (1%) of the *then outstanding votes entitled to be cast on any matter* [then outstanding shares of any class of capital stock] (such increase or decrease to be measured cumulatively from the amount shown on the last such report), unless any increase or decrease of less than one percent (1%) results in such Person owning *shares of stock of the Corporation that represent* more than twenty percent (20%) or more than forty

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] In Amendment No. 1, the Exchange made technical changes to correct the marking of the proposed rule text.

percent (40%) of the *then outstanding votes entitled to be cast on any matter* [shares of any class of capital stock then outstanding] (at a time when such Person previously owned less than such percentages) or such Person owning *shares of stock of the Corporation that represent* less than twenty percent (20%) or less than forty percent (40%) of the *then outstanding votes entitled to be cast on any matter* [shares of any class of capital stock then outstanding] (at a time when such Person previously owned more than such percentages).

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the CHX included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The CHX has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

As a result of its demutualization in February 2005, the Exchange became the wholly-owned subsidiary of CHX Holdings, a Delaware corporation.[4] The Exchange's demutualization was driven, in part, by a desire to generate opportunities to enter into strategic alliances by offering stock to interested entities. On June 21, 2006, CHX Holdings announced that it had agreed to the terms of strategic transactions with four firms that will result in an investment in CHX Holdings, in exchange for minority equity stakes in the company. In connection with these transactions, CHX Holdings has agreed to propose amendments to its charter to: (1) Make a minor change in the ownership limitations applicable to both CHX participants and other persons or entities; and (2) increase the number of shares of common stock which CHX Holdings is authorized to issue.

The CHX Holdings charter currently prohibits any person, either alone or together with its related persons, from owning, directly or indirectly, shares constituting more than 40% of any class of CHX Holdings capital stock.[5] A related provision bars any person that holds a CHX trading permit, either alone or together with its related persons, from owning, directly or indirectly, shares constituting more than 20% of any class of CHX Holdings capital stock.[6] Other provisions place limitations on the percentage of shares that can be voted.[7] The ownership and voting limitations that apply to holders of CHX trading permits were designed to ensure that no participant in the Exchange (or its parent company, CHX Holdings) has such a large ownership in CHX Holdings that it casts doubt on the Exchange's ability to fairly and objectively exercise its self-regulatory responsibilities.[8]

CHX Holdings now seeks to make a minor change in these ownership provisions—keeping the same 20% and 40% limitations—but referring to shares of stock of CHX Holdings representing in the aggregate more than 20% or 40% of ''the then outstanding votes entitled to be cast on any matter,'' rather than to the shares of each class of stock that a person might own. CHX Holdings believes that this revised definition would more precisely address the reason for establishing the limitations in the first place—to limit the voting power that can be wielded by a stockholder that is also an Exchange participant. The language proposed by CHX Holdings is identical to text included in the recently-approved Amended and Restated Certificate of Incorporation of NYSE Group, Inc.[9]

In addition to the above-noted proposed wording change to the ownership limitations set out in the CHX Holdings charter, CHX Holdings also seeks approval to increase the number of shares of common stock that can be issued by the company from 750,000 to 900,000. CHX Holdings proposes this increase in the number of authorized shares to, among other things, permit the company to seek one or more additional investors and to have shares available if the company later seeks to establish an equity compensation plan for directors, officers or employees.

All of these proposed changes to the CHX Holdings charter must be presented to the CHX Holdings stockholders for approval before they are effective. CHX Holdings plans to do so at the annual stockholder meeting on July 19, 2006.[10] Stockholders will be provided with proxy materials prior to the meeting that will describe these proposals and other issues in more detail.[11]

2. Statutory Basis

The CHX believes the proposal is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b).[12] The CHX believes the proposal is consistent with Section 6(b)(5) of the Act[13] in that it is designed to promote just and equitable principles of trade, to remove impediments, and to perfect the mechanism of, a free and open market and a national market system, and, in general, to protect investors and the public interest by permitting CHX Holdings to make minor changes to the ownership limitations set out in its charter that fully address the reasons for establishing those limitations in the first place and that are identical to the language used by at least

[4] *See* Securities Exchange Act Release No. 51149 (February 8, 2005), 70 FR 7531 (February 14, 2005) (order approving File No. SR–CHX–2004–26) (''Demutualization Approval Order'').

[5] *See* Article Fifth, Section (b)(ii)(A) of the CHX Holdings charter. This article defines a ''person'' as ''an individual, partnership (general or limited), joint stock company, corporation, limited liability company, trust or unincorporated organization or any governmental entity or agency or political subdivision thereof.'' *See* Article Fifth, Section (a)(i). A ''related person'' is defined as ''(A) with respect to any [p]erson, all 'affiliates' and 'associates' of such [p]erson (as such terms are defined in Rule 12b–2 under the Securities Exchange Act of 1934, as amended); (B) with respect to any [p]erson that holds a permit issued by the Chicago Stock Exchange, Inc. to trade securities on the Chicago Stock Exchange (a ''Participant''), any broker or dealer with which a Participant is associated; and (C) any two or more [p]ersons that have any agreement, arrangement or understanding (whether or not in writing) to act together for the purpose of acquiring, voting, holding or disposing of shares of the capital stock of the Corporation.'' *See* Article Fifth, Section (a)(ii).

[6] *See* Article Fifth, Section (b)(ii)(B).

[7] *See* Article Fifth, Section (b)(ii)(C).

[8] The Commission consistently has noted this concern as it approved substantially similar ownership and voting restrictions in connection with the proposed demutualizations or restructurings of national securities exchanges. *See* Demutualization Approval Order, *supra* note 4, 70 FR at 7538; Securities Exchange Act Release No. 49718 (May 17, 2004), 69 FR 29611 (May 24, 2004) (order approving SR–PCX–2004–08); Securities Exchange Act Release No. 49098 (January 16, 2004), 69 FR 3974 (January 27, 2004) (order approving SR–Phlx–2003–73).

[9] *See* Article V, Section 2 of the Amended and Restated Certificate of Incorporation of NYSE Group, Inc., approved by the Commission in Securities Exchange Act Release No. 53382 (February 27, 2006), 71 FR 11251 (March 6, 2006) (order approving NYSE–2005–77).

[10] If CHX Holdings stockholders approve the proposed change, the Exchange will file with the Commission an amendment to this proposal to reflect that approval.

[11] CHX Holdings has halted trading in its common stock until the third business day following distribution of these materials.

[12] 15 U.S.C. 78f(b).

[13] 15 U.S.C. 78f(b)(5).

one other national securities exchange in doing so.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–CHX–2006–22 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–CHX–2006–22. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CHX–2006–22 and should be submitted on or before July 25, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[14]

Nancy M. Morris,

Secretary.

[FR Doc. E6–10714 Filed 7–7–06; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–54074; File No. SR–ISE–2006–30]

Self-Regulatory Organizations; International Securities Exchange, Inc.; Notice of Filing of Proposed Rule Change, and Amendment No. 1 Thereto, To Increase the Linkage Inbound Principal Order Fee

June 30, 2006.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 5, 2006, the International Securities Exchange, Inc. (''ISE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which items have been prepared by the ISE. On June 29, 2006, the Exchange filed Amendment No. 1 to the proposed rule change.[3] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its Schedule of Fees to change the Linkage Inbound Principal Order (''P Order'') fee. The text of the proposed rule change is available at the Commission's Public Reference Room, at the Exchange and at the Exchange's Web site (*http://www.iseoptions.com/legal/proposed_rule_changes.asp*).

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change as amended and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend its Schedule of Fees to increase from $0.15 to $0.24, per contract, the P Order fee for orders sent to the Exchange via the Intermarket Options Linkage pursuant to the Plan for the Purpose of Creating and Operating an Intermarket Option Linkage (''Plan'').[4] This proposed rule change will remain in effect as part of an existing pilot program, which is scheduled to expire on July 31, 2006.[5] Additionally, in order to implement this proposed rule change, the Exchange is creating two new line items in its Schedule of Fees: one for Linkage P Orders and one for Linkage P/A Orders.[6]

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[14] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] In Amendment No. 1, the Exchange proposed to delete certain language in its Schedule of Fees.

[4] *See* Exchange Act Release No. 43086 (July 28, 2000), 65 FR 48023 (August 4, 2000) (order approving the Plan and ISE as a participant in the Plan).

[5] Fees for Linkage P and P/A Orders are currently subject to a pilot program scheduled to expire on July 31, 2006. *See* Exchange Act Release No. 52168 (July 29, 2005), 70 FR 45454 (August 5, 2005) (SR–ISE–2005–32).

[6] The fee for Linkage P/A Orders is not subject to change pursuant to this filing, and would remain at $0.15 per contract. As before, (1) both Linkage P and Linkage P/A Orders shall remain subject to a comparison fee of $0.03 per contract, and (2) Satisfaction Orders are excluded from these fees.

Both these fees are currently found in the Schedule of Fees under the Firm Proprietary line item.

2. Statutory Basis

The Exchange states that the basis for this proposed rule change is the requirement under section 6(b)(4) of the Act,[7] which requires that an exchange have an equitable allocation of reasonable dues, fees and other charges among its members and other persons using its facilities.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes that the proposed rule change would not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change; or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File No. SR–ISE–2006–30 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–ISE–2006–30. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the ISE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–ISE–2006–30 and should be submitted on or before July 31, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Nancy M. Morris,

Secretary.

[FR Doc. E6–10682 Filed 7–7–06; 8:45 am]

BILLING CODE 8010–01–P

[7] 15 U.S.C. 78f(b)(4).

[8] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–54087; File No. SR–ISE–2005–60]

Self-Regulatory Organizations; International Securities Exchange, Inc.; Order Approving Proposed Rule Change and Amendment Nos. 1 and 2 Thereto and Notice of Filing and Order Granting Accelerated Approval to Amendment No. 3 Thereto Relating to the Criteria for Securities That Underlie Options Traded on the Exchange

June 30, 2006.

I. Introduction

On December 14, 2005, the International Securities Exchange, Inc. (''Exchange'' or ''ISE'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] a proposed rule change to enable the listing and trading on the Exchange of options on shares or other securities (''Fund Shares'') that hold specified non-U.S. currency. The ISE filed Amendment No. 1 to the proposed rule change on May 5, 2006.[3] The ISE filed Amendment No. 2 to the proposed rule change on May 9, 2006.[4] The proposed rule change, as amended, was published for comment in the **Federal Register** on May 16, 2006.[5] The Commission received no comments on the proposal. On June 28, 2006, the Exchange filed Amendment No. 3 to the proposed rule change.[6] This order approves the proposed rule change, as amended, grants accelerated approval to Amendment No. 3 to the proposed rule change, and solicits comments from interested persons on Amendment No. 3.

II. Description of the Proposed Rule Change

The Exchange proposes to amend ISE Rules 408(a), 502(h), 807(a), and 1400 to enable the initial and continued listing and trading on the Exchange of options on Fund Shares that represent interests

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Amendment No. 1 replaced the original filing in its entirety.

[4] Amendment No. 2 replaced the text of proposed ISE Rules 408(a) and 807(a) in their entirety.

[5] *See* Securities Exchange Act Release No. 53783 (May 10, 2006), 71 FR 28394 (''Notice'').

[6] In Amendment No. 3, which supplemented the proposal as noticed, the Exchange amended ISE Rule 503(h)(3) to clarify that the Exchange will consider the suspension of opening transactions with respect to a Fund Share if, *inter alia,* the value of the non-U.S. currency on which the Fund Shares are based is no longer calculated or available.

in a trust that hold a specified non-U.S. currency. In addition, the Exchange proposes to amend ISE Rule 503(h) to clarify the effect, with respect to options trading on the Exchange, of any Fund Shares being delisted from trading or halted from trading on their primary market.

Specifically, the Exchange is proposing to amend ISE Rule 502(h) (Criteria for Underlying Securities) to broaden the definition of Fund Shares to include shares or other securities that represent interests in registered investment companies or unit investment trusts or similar entities that hold a specified non-U.S. currency. The Exchange is also proposing to make other conforming changes to the text of ISE Rule 502(h) to reflect the proposed broadened definition of Fund Shares. In addition, the Exchange is proposing to require, in ISE Rule 502(h)(4), that before listing and trading options on Fund Shares based on a non-U.S. currency, the Exchange must have entered into an appropriate comprehensive surveillance sharing agreement with the applicable marketplace or marketplaces with last sale reporting that represent(s) the highest volume in derivatives (options or futures) on the specified non-U.S. currency. This provision means that the options exchange listing options on the Fund Shares must utilize the same comprehensive surveillance sharing arrangements utilized by the equity markets that list and trade the Fund Shares.

The Exchange also proposes to amend ISE Rule 408(a) to require a member to establish, maintain, and enforce written policies and procedures to prevent the misuse of any material nonpublic information it might have or receive in a related security, option, or derivative security or in the applicable non-U.S. currency, non-U.S. currency options, futures or options on futures on such currency, or any other derivatives based on such currency. In addition, the Exchange proposes to amend ISE Rules 807(a) and 1400 to require that market makers handling Fund Shares provide the Exchange with all necessary information relating to their trading in the applicable non-U.S. currency, non-U.S. currency options, futures or options on futures on such currency, or any other derivatives based on such currency.

Finally, the Exchange proposes to amend ISE Rule 503(h) regarding withdrawal of approval of the underlying securities to specify that Fund Shares approved for options trading under ISE Rule 502(h) will not be deemed to meet the requirements for continued approval, and ISE will not open any additional series of options contracts thereof, if the Fund Shares are delisted from trading or halted from trading on their primary market. In Amendment No. 3, the Exchange is also proposing to amend ISE Rule 503(h)(3) to clarify the continued listing criteria applicable to Fund Shares that hold specified non-U.S. currency.[7]

III. Discussion

After careful review, the Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[8] In particular, the Commission finds that the proposed rule change, as amended, is consistent with Section 6(b)(5) of the Act,[9] which requires, among other things, that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest.

Currently, the Exchange can list options on Fund Shares that represent interests in registered investment companies, unit investment trusts, or other similar entities that hold portfolios of securities or are otherwise based on or represent investments in broad-based indexes or portfolios of securities.[10] The Exchange's proposal would allow it to list and trade options on Fund Shares whose investment assets consist of a specified non-U.S. currency deposited with a trust. For example, the Exchange's proposed rule change will permit the Exchange to list options on the Euro Currency Trust (''Trust''), which issues shares (''Euro Shares'') that are listed and traded on the New York Stock Exchange (''NYSE'') under the symbol ''FXE,'' and may also trade in other markets.[11] Fund Shares would continue to need to satisfy the listing standards in ISE Rule 502(h). Specifically, the Fund Shares must be traded on a national securities exchange or through the facilities of a national securities association and, as the Exchange has proposed, must be an ''NMS stock'' as defined under Rule 600 of Regulation NMS.[12] The Fund Shares must also either: (1) Meet the criteria and guidelines under ISE Rules 502(a) and 502(b) (Criteria for Underlying Securities); or (2) be available for creation or redemption each business day from and through the issuer in cash or in-kind at a price related to net asset value, and the issuer is obligated to issue Fund Shares in a specified aggregate number even if some or all of the investments required to be deposited have not been received by the issuer, subject to the condition that the person obligated to deposit the investments has undertaken to deliver the investment assets as soon as possible, and such undertaking is secured by the delivery and maintenance of collateral consisting of cash or cash equivalents satisfactory to the issuer, as described in the Fund Share's prospectus. The Commission notes that the Exchange has represented that the expansion of the types of investments that may be held by Fund Shares under ISE Rule 502(h) will not have any effect on the rules pertaining to position and exercise limits[13] or margin.[14]

To accommodate the listing and trading of options on Fund Shares investing primarily in non-U.S. currency, the Exchange proposes to amend ISE Rule 408(a) to require that, in connection with trading in the applicable non-U.S. currency, non-U.S. currency options, futures or options on futures on such currency, or any other derivatives based on such currency, an ISE member must establish policies and procedures prohibiting the use of any material nonpublic information it might have or receive from any person associated with it in the applicable non-U.S. currency, non-U.S. currency options, futures or options on futures on such currency, or any other derivatives based on such currency. Further, the Exchange proposes to amend ISE Rules 807(a) and 1400 to require that market makers handling Fund Shares provide the Exchange with all necessary information relating to their trading in the applicable non-U.S. currency, non-U.S. currency options, futures or options on futures on such currency, or any other derivatives based on such

[7] *See supra* note 6.

[8] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[9] 15 U.S.C. 78f(b)(5).

[10] *See* ISE Rule 502(h).

[11] *See* Securities Exchange Act Release No. 52843 (November 28, 2005), 70 FR 72486 (December 5, 2005) (SR–NYSE–2005–65).

[12] In light of the implementation of certain aspects of Regulation NMS, the Exchange also proposes to amend ISE Rule 502(h) to reflect that qualifying Fund Shares must be defined as National Market System stocks as defined under Rule 600 of Regulation NMS.

[13] *See* Notice, *supra* note 5, at text accompanying note 13. *See also* ISE Rules 412 and 414.

[14] *See* Notice, *supra* note 5, at text accompanying note 14. *See also* ISE Rule 1202.

currency. The Commission believes that these requirements minimize the potential for manipulating the underlying currency held by the Fund Shares.

Finally, under the proposed change to ISE Rule 503(h), Fund Shares would not be deemed to meet the requirements for continued approval, and the Exchange would not open for trading any additional series of option contracts of the class covering such Fund Shares, if the Fund Shares are delisted from trading or, pursuant to the proposed rule change, are halted from trading on their primary market. The Commission believes that the Exchange's proposal to expand ISE Rule 503(h) to address the effect of a trading halt in the Fund Shares on their primary market is consistent with the protection of investors and the public interest.

The Commission also notes that the Exchange has represented that it has an adequate surveillance program in place for options on Fund Shares, as defined by the Exchange's proposal, and it intends to apply those same program procedures that it applies to options on Fund Shares currently traded on the Exchange. In addition, the Exchange is able to obtain trading information via the Intermarket Surveillance Group (''ISG'') from other exchanges who are members or affiliates of the ISG. With respect to the Euro Shares, the Commission notes that the Exchange can obtain such information from the Philadelphia Stock Exchange (''Phlx'') in connection with euro options trading on the Phlx and from the Chicago Mercantile Exchange (''CME'') and the London International Financial Futures Exchange (''LIFFE'') in connection with euro futures trading on those exchanges.[15]

The Commission finds good cause for approving Amendment No. 3 to the proposed rule change prior to the thirtieth day after the date of the publication of notice thereof in the **Federal Register** pursuant to Section 19(b)(2) of the Act.[16] The Commission notes that Amendment No. 3 clarifies the operation of the continued listing criteria in ISE Rule 503(h)(3) by providing that the Exchange will consider the suspension of opening transactions for Fund Shares if the value of the non-U.S. currency on which the Fund Shares are based is no longer calculated or available.[17] The Commission notes that the Notice's discussion of the Euro Shares addressed this point,[18] and that Amendment No. 3 makes a conforming change to the text of ISE Rule 503(h)(3) to address the Exchange's proposed broadened definition of Fund Shares to include Fund Shares that represent interests in a trust that hold a specified non-U.S. currency. The Commission therefore believes that it is appropriate to accelerate approval of Amendment No. 3 so that the proposed rule change, as amended, may be implemented without delay.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether Amendment No. 3 to the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–ISE–2005–60 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–ISE–2005–60. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–ISE–2005–60 and should be submitted on or before July 31, 2006.

V. Conclusion

For the foregoing reasons, the Commission finds that the proposed rule change, as amended, is consistent with the Act and rules and regulations thereunder applicable to the national securities exchange.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[19] that the proposed rule change (SR–ISE–2005–60), as amended, is approved, and Amendment No. 3 is approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[20]

Nancy M. Morris,

Secretary.

[FR Doc. E6–10717 Filed 7–7–06; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–54083; File No. SR–ISE–2006–35]

Self-Regulatory Organizations; International Securities Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Directed Orders System Change

June 30, 2006.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 30, 2006, the International Securities Exchange, Inc. (''ISE'' or ''Exchange'') filed with the Securities and Exchange

[15] Phlx is a member of ISG. CME and LIFFE are affiliate members of ISG.

[16] 15 U.S.C. 78s(b)(2). Pursuant to Section 19(b)(2) of the Act, the Commission may not approve any proposed rule change, or amendment thereto, prior to the thirtieth day after the date of publication of the notice thereof, unless the Commission finds good cause for so doing.

[17] Under the existing continued listing criteria in ISE Rule 503(h), Fund Shares may be delisted as follows: (1) Following the initial twelve-month period beginning upon the commencement of trading of the Fund Shares, there are fewer than 50 record and/or beneficial holders of the Fund Shares for 30 or more consecutive trading days; (2) the value of the index or portfolio of securities is no longer calculated or available; or (3) such other event occurs or condition exists that in the opinion of the Exchange makes further dealing on the Exchange inadvisable.

[18] *See* Notice, *supra* note 5, at 28397 (noting that Euro Shares may be delisted if the value of the euro is no longer calculated or available).

[19] 15 U.S.C. 78s(b)(2).

[20] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the ISE. The proposed rule change has been filed by the ISE as effecting a change in an existing order-entry or trading system pursuant to section 19(b)(3)(A) of the Act,[3] and Rule 19b–4(f)(5) thereunder,[4] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The ISE is proposing to extend the pilot period for the system change that identifies to a Directed Market Maker (''DMM'') the identity of the firm entering a Directed Order until September 30, 2006.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the ISE included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The ISE has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On January 5, 2006, the ISE initiated a system change to identify to a DMM the identity of the firm entering a Directed Order. The ISE filed this system change on a pilot basis under section 19(b)(3)(A) of the Act and Rule 19b–4(f)(5) thereunder [5] so that it would be effective while the Commission considered a separate proposed rule change filed under section 19(b)(2) of the Act to amend the ISE's rules to reflect the system change on a permanent basis (the ''Permanent Rule Change'').[6] The pilot currently expires on June 30, 2006, but the Commission has not yet taken action with respect to the Permanent Rule Change. Accordingly, the Exchange proposes to extend the pilot until September 30, 2006, so that the system change will remain in effect while the Commission continues to evaluate the Permanent Rule Change.[7]

2. Statutory Basis

The Exchange believes that the basis under the Act is found in section 6(b)(5), in that the propose rule change is designed to promote just and equitable principles of trade, remove impediments to and perfect the mechanisms of a free and open market and a national market system and, in general, to protect investors and the public interest. Extension of the pilot program will allow the Exchange to remain competitive with the Boston Options Exchange (''BOX''), which operates a directed orders program that discloses the identity of an entering firm to the BOX directed market maker.[8]

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes that the proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change effects a change in an existing order entry or trading system that (i) does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) does not have the effect of limiting access to or availability of the system, it has become effective pursuant to section 19(b)(3)(A)(iii) of the Act [9] and Rule 19b–4(f)(5) thereunder.[10]

At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File No. SR–ISE–2006–35 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–ISE–2006–35. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the ISE.

All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(5).

[5] Securities Exchange Act Release No. 53104 (Jan. 11, 2006), 71 FR 3142 (Jan. 19, 2006) (Notice of Filing and Immediate Effectiveness for SR–ISE–2006–02).

[6] Securities Exchange Act Release No. 53103 (Jun. 11, 2006), 71 FR 3144 (Jan. 19, 2006) (Notice of Filing for SR–ISE–2006–01).

[7] The ISE anticipated that extension of the pilot might be necessary and included this in the filing for the initial pilot. *See supra* note 3, at footnote 5.

[8] *See* Securities Exchange Act Release Nos. 53015 (Dec. 22, 2005), 70 FR 77207 (Dec. 29, 2005); 53357 (Feb. 23, 2006); and 71 FR 10730 (March 2, 2006) (SR–BSE–2005–52).

[9] 15 U.S.C. 78s(b)(3)(A)(iii).

[10] 17 CFR 19b–4(f)(5).

should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–ISE–2006–35 and should be submitted on or before July 31, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Nancy M. Morris,

Secretary.

[FR Doc. E6–10719 Filed 7–7–06; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

(Release No. 34–54071; File No. SR–NASD–2006–068)

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendments No. 1, 2, 3 and 4 Thereto To Create the Nasdaq Global Select Market and Rename the Nasdaq National Market

June 29, 2006.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on May 30, 2006, the National Association of Securities Dealers, Inc. (''NASD''), through its subsidiary, The Nasdaq Stock Market, Inc. (''Nasdaq''), filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by Nasdaq. Nasdaq has filed this proposal pursuant to Section 19(b)(3)(A) of the Act [3] and Rule 19b–4(f)(6) thereunder,[4] which renders the proposal effective upon filing with the Commission. On June 9, 2006, Nasdaq filed Amendment No. 1 to the proposed rule change.[5] Nasdaq filed Amendment No. 2 on June 15, 2006, Amendment No. 3 on June 27, 2006, and Amendment No. 4 on June 29, 2006.[6] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Nasdaq proposes to rename the Nasdaq National Market as the Nasdaq Global Market and to create the Nasdaq Global Select Market, a new tier within the Nasdaq Global Market with higher initial listing standards. Nasdaq would implement the proposed rule change on July 1, 2006. Nasdaq previously filed substantially identical changes to the rules of the NASDAQ Stock Market LLC (''Nasdaq LLC'').[7] This rule filing incorporates these changes into the rules of the NASD because Nasdaq LLC will not commence operations as a national securities exchange prior to the planned July 1, 2006, launch date for the Nasdaq Global Select Market.[8]

The text of the proposed rule change is available on Nasdaq's Web site (*http://www.nasdaq.com*), at Nasdaq's principal office, and at the Commission's Public Reference Room. The text of the proposed rule change is included below. Proposed new language is *italicized*; deletions are [bracketed].

* * * * *

IM–2310–2. Fair Dealing With Customers

(a)–(d) No change.

(e) Fair Dealing With Customers with Regard to Derivative Products or New Financial Products.

(1)–(2) No change.

(3) Hybrid Securities and Selected Equity-Linked Debt Securities (''SEEDS'') Designated as Nasdaq [National] *Global* Market Securities Pursuant to the Rule 4400 Series.

No change.

* * * * *

2710. Corporate Financing Rule—Underwriting Terms and Arrangements

(a) No change.

(b) (1)–(6) No change.

(7) Offerings Exempt from Filing.

Notwithstanding the provisions of subparagraph (1) above, documents and information related to the following public offerings need not be filed with NASD for review, unless subject to the provisions of Rule 2720. However, it shall be deemed a violation of this Rule or Rule 2810, for a member to participate in any way in such public offerings if the underwriting or other arrangements in connection with the offering are not in compliance with this Rule or Rule 2810, as applicable:

(A)–(E) No change.

(F) Exchange offers of securities where:

(i) The securities to be issued or the securities of the company being acquired are listed on The Nasdaq [National] *Global* Market, the New York Stock Exchange, or the American Stock Exchange; or

(ii) No change.

(G) No change.

(8)–(11) No change.

(c)–(j) No change.

* * * * *

2790. Restrictions on the Purchase and Sale of Initial Equity Public Offerings

(a)–(b) No change.

(c) General Exemptions.

The general prohibitions in paragraph (a) of this rule shall not apply to sales to and purchases by the following accounts or persons, whether directly or through accounts in which such persons have a beneficial interest:

(1)–(4) No change.

(5) A publicly traded entity (other than a broker/dealer or an affiliate of a broker/dealer where such broker/dealer is authorized to engage in the public offering of new issues either as a selling group member or underwriter) that:

(A) No change.

(B) Is traded on the Nasdaq [National] *Global* Market; or

(C) Is a foreign issuer whose securities meet the quantitative designation criteria for listing on a national securities exchange or trading on the Nasdaq [National] *Global* Market;

(6)–(10) No change.

(d)–(h) No change.

(i) Definitions.

(1)–(9) No change.

(10) ''Restricted person'' means:

(A)–(D) No change.

(E) Persons Owning a Broker/Dealer.

(i)–(iii) No change.

(iv) Any person that directly or indirectly owns 10% or more of a public reporting company listed, or required to be listed, in Schedule A of a Form BD (other than a reporting company that is listed on a national securities exchange or is traded on the Nasdaq [National] *Global* Market, or other than with respect to a limited business broker/dealer);

(v) Any person that directly or indirectly owns 25% or more of a public reporting company listed, or required to be listed, in Schedule B of a Form BD (other than a reporting company that is listed on a national securities exchange or is traded on the Nasdaq [National] *Global* Market, or other than with respect to a limited business broker/dealer);

(vi) No change.

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[11] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6).

[5] Amendment No. 1 replaced the original filing in its entirety.

[6] In Amendments No. 2, 3 and 4, Nasdaq made certain technical corrections and clarifications to its rule text.

[7] *See* Securities Exchange Act Release No. 53799 (May 12, 2006), 71 FR 29195 (May 19, 2006) (SR–NASDAQ–2006–007).

[8] *See* Securities Exchange Act Release No. 53128 (January 13, 2006), 71 FR 3550 (January 23, 2006).

(j) No change.

* * * * *

3350. Short Sale Rule

(a)(1) With respect to trades executed on or reported to the ADF, no member shall effect a short sale for the account of a customer or for its own account in a Nasdaq [National] *Global* Market security at or below the current national best (inside) bid when the current national best (inside) bid is below the preceding national best (inside) bid in the security.

(2) With respect to trades executed on or reported to Nasdaq, no member shall effect a short sale for the account of a customer or for its own account in a Nasdaq [National] *Global* Market security at or below the current best (inside) bid displayed in the Nasdaq Market Center when the current best (inside) bid is below the preceding best (inside) bid in the security.

(b)–(g) No change.

(h)(1) A member shall be permitted, consistent with its quotation obligations, to execute a short sale for the account of an options market maker that would otherwise be in contravention of this Rule, if:

(A) The options market maker is registered with a qualified options exchange as a qualified options market maker in a stock options class on a Nasdaq [National] *Global* Market security or an options class on a qualified stock index; and

(B) No change.

(2) For purposes of this paragraph:

(A)(i) An ''exempt hedge transaction,'' in the context of qualified options market makers in stock options classes, shall mean a short sale in a Nasdaq [National] *Global* Market security that was effected to hedge, and in fact serves to hedge, an existing offsetting options position or an offsetting options position that was created in a transaction(s) contemporaneous with the short sale,* provided that when establishing the short position the options market maker is eligible to receive(s) good faith margin pursuant to Section 220.12 of Regulation T under the Act for that transaction.

(ii) An ''exempt hedge transaction,'' in the context of qualified options market makers in stock index options classes, shall mean a short sale in a Nasdaq [National] *Global* Market security that was effected to hedge, and in fact serves to hedge, an existing offsetting stock index options position or an offsetting stock index options position that was created in a transaction(s) contemporaneous with the short sale, provided that:

a.–c. No change.

(iii) No change.

(B) A ''qualified options market maker'' shall mean an options market maker who has received an appointment as a ''qualified options market maker'' for certain classes of stock options on Nasdaq [National] *Global* Market securities and/or index options on qualified stock indexes pursuant to the rules of a qualified options exchange.

(C) No change.

(D) A ''qualified stock index'' shall mean any stock index that includes one or more Nasdaq [National] *Global* Market securities, provided that more than 10% of the weight of the index is accounted for by Nasdaq [National] *Global* Market securities and provided further that the qualification of an index as a qualified stock index shall be reviewed as of the end of each calendar quarter, and the index shall cease to qualify if the value of the index represented by one or more Nasdaq [National] *Global* Market securities is less than 8% at the end of any subsequent calendar quarter.

(E)–(F) No change.

(i)(1) No change.

(2) For purposes of this paragraph, an ''exempt hedge transaction'' shall mean a short sale in a Nasdaq [National] *Global* Market security that was effected to hedge, and in fact serves to hedge, an existing offsetting warrant position or an offsetting warrant position that was created in a transaction(s) contemporaneous with the short sale.* Notwithstanding any other provision of this paragraph, any transaction unrelated to normal warrant market making activity, such as index arbitrage or risk arbitrage that in either case is independent of a warrant market maker's market making functions, will not be considered an ''exempt hedge transaction.''

(3)–(4) No change.

(j)–(1) No change.

IM–3350. Short Sale Rule

(a)(1) In developing a Short Sale Rule for Nasdaq [National] *Global* Market securities, NASD adopted an exemption to the Rule for certain market making activity. This exemption was deemed an essential component of the Rule because bona fide market making activity is necessary and appropriate to maintain continuous, liquid markets in Nasdaq [National] *Global* Market securities. Rule 3350(c)(1) states that short selling prohibitions shall not apply to sales by qualified Nasdaq market makers or registered ADF market makers in connection with bona fide market making activity and specifies that transactions unrelated to normal market making activity, such as index arbitrage and risk arbitrage that are independent from a member's market making functions, will not be considered as bona fide market making. Thus two standards are to be applied: One must be a ''qualified'' Nasdaq market maker or a registered ADF market maker and one must engage in ''bona fide'' market making activity to take advantage of this exemption. With this interpretation, NASD wishes to clarify for members some of the factors that will be taken into consideration when reviewing market making activity that may not be deemed to be bona fide market making activity and therefore would not be exempted from the Rule's application.

(2)–(3) No change.

(b)(1) With respect to trades executed on or reported to the ADF, Rule 3350 requires that no member shall effect a short sale for the account of a customer or for its own account in a Nasdaq [National] *Global* Market security at or below the current national best (inside) bid when the current national best (inside) bid is below the preceding national best (inside) bid in the security. NASD has determined that in order to effect a ''legal'' short sale when the current best bid is lower than the preceding best bid the short sale must be executed at a price of at least $0.01 above the current inside bid when the current inside spread is $0.01 or greater. The last sale report for such a trade would, therefore, be above the inside bid by at least $0.01.

(2) With respect to trades executed on or reported to Nasdaq, Rule 3350 requires that no member shall effect a short sale for the account of a customer or for its own account in a Nasdaq [National] *Global* Market security at or below the current best (inside) bid displayed in the Nasdaq Market Center when the current best (inside) bid is below the preceding best (inside) bid in the security. Nasdaq has detennined that in order to effect a ''legal'' short sale when the current best bid is lower than the preceding best bid the short sale must be executed at a price of at least $0.01 above the current inside bid when the current inside spread is $0.01 or greater. The last sale report for such a trade would, therefore, be above the inside bid by at least $0.01.

(c)–(d) No change.

* * * * *

* The phrase contemporaneously established includes transactions occurring simultaneously as well as transactions occurring within the same brief period of time.

4200. DEFINITIONS

(a) For purposes of the Rule 4000 Series, unless the context requires otherwise:

(1)–(24) No change.

(25) [''Nasdaq National Market'' or ''NNM'' is a distinct tier of The Nasdaq Stock Market comprised of securities that meet the requirements of and are authorized as a Nasdaq National Market security.] *''Nasdaq Global Market'' or ''NGM'' is a distinct tier of Nasdaq comprised of two segments: the Nasdaq Global Market and the Nasdaq Global Select Market. The Nasdaq Global Market is the successor to the Nasdaq National Market.*

(26) ''Nasdaq [National] *Global* Market security'' or ''[NNM] *NGM* security'' means any authorized security in the Nasdaq [National] *Global* Market which (1) satisfies all applicable requirements of the Rule 4300 Series and substantially meets the criteria set forth in the Rule 4400 Series and is subject therefore to a transaction reporting plan approved by the Commission; (2) is a right to purchase such security; (3) is a warrant to subscribe to such security; or (4) is an index warrant which substantially meets the criteria set forth in Rule 4420, and has been designated therefore as a national market system security pursuant to [SEC Rule 11Aa2–1] *Rule 600 of SEC Regulation NMS*.

(27) No change.

(28) ''Nasdaq Capital Market security'' means any authorized security in The Nasdaq Capital Market which (1) satisfies all applicable requirements of the Rule 4300 Series other than a Nasdaq [National] *Global* Market security; (2) is a right to purchase such security; or (3) is a warrant to subscribe to such security.

(29) ''The Nasdaq Stock Market'' or ''Nasdaq'' is an electronic securities market comprised of competing market makers whose trading is supported by a communications network linking them to quotation dissemination, trade reporting, and order execution systems. This market also provides specialized automation services for screen-based negotiations of transactions, on-line comparison of transactions, and a range of informational services tailored to the needs of the securities industry, investors and issuers. [The Nasdaq Stock Market consists of two distinct market tiers: the ''Nasdaq National Market'' or ''NNM,'' and ''The Nasdaq Capital Market''.] The Nasdaq Stock Market is operated by The Nasdaq Stock Market, Inc., a wholly-owned subsidiary of the Association.

(30) [Reserved.]

(a) *''Nasdaq Global Select Market'' or ''NGSM'' is a segment of the Nasdaq Global Market comprised of NGM securities that met the requirements for initial inclusion contained in Rules 4425, 4426 and 4427.*

(b) ''Nasdaq Global Select Market security'' or ''NGSM security'' means any security listed on Nasdaq and included in the Nasdaq Global Select segment of the Nasdaq Global Market.

(31)–(39) No change.

(b) No change.

* * * * *

4310. Qualification Requirements for Domestic and Canadian Securities

To qualify for inclusion in Nasdaq, a security of a domestic or Canadian issuer shall satisfy all applicable requirements contained in paragraphs (a) or (b), and (c) hereof.

(a)–(b) No change.

(c) In addition to the requirements contained in paragraph (a) or (b) above, and unless otherwise indicated, a security shall satisfy the following criteria for inclusion in Nasdaq:

(1)–(8) No change.

(9)(A)–(B) No change.

(C) In the case of index warrants, the criteria established in the Rule 4400 Series for Nasdaq [National] *Global* Market securities shall apply.

(10)–(30) No change.

(d) No change.

* * * * *

4350. Qualitative Listing Requirements for Nasdaq [National Market and Nasdaq Capital Market] Issuers Except for Limited Partnerships

No change.

4350–1 Qualitative Listing Requirements for Nasdaq (National Market and Nasdaq Capital Market] Issuers Except for Limited Partnerships

No change.

* * * * *

4400. Nasdaq [National] *Global* Market—Issuer Designation Requirements

No change.

IM–4400. Impact of Non-Designation of Dually Listed Securities

To foster competition among markets and further the development of the national market system following the repeal of NYSE Rule 500, Nasdaq shall permit issuers whose securities are listed on the New York Stock Exchange to apply also to list those securities on the Nasdaq [National] *Global* Market ([''NNM''] *''NGM''*). Nasdaq shall make an independent determination of whether such issuers satisfy all applicable listing requirements and shall require issuers to enter into a dual listing agreement with Nasdaq.

While Nasdaq shall certify such dually listed securities for listing on the [NNM] *NGM*, Nasdaq shall not exercise its authority under the NASD Rule 4400 Series separately to designate or register such dually listed securities as Nasdaq national market system securities within the meaning of Section 11A of the Securities Exchange Act of 1934 or the rules thereunder. As a result, these securities, which are already designated as national market system securities under the Consolidated Quotation Service (''CQS'') and Consolidated Tape Association national market system plans (''CQ and CTA Plans''), shall remain subject to those plans and shall not become subject to the Nasdaq UTP Plan, the national market system plan governing securities designated by the Nasdaq Stock Market. For purposes of the national market system, such securities shall continue to trade under their current one, two, or three-character ticker symbol. Nasdaq shall continue to send all quotations and transaction reports in such securities to the processor for the CTA Plan. In addition, dually listed issues that are currently eligible for trading via the Intermarket Trading System (''ITS'') shall remain so and continue to trade on the Nasdaq Intermarket trading platform as they do today.

Through this interpretation, Nasdaq also resolves any potential conflicts that arise under NASD rules as a result of a single security being both a CQS security, which is subject to one set of rules, and a listed [NNM] *NGM* security, which is subject to a different set of rules. Specifically, dually listed securities shall be Nasdaq securities for purposes of rules related to listing and delisting, and shall remain as CQS securities under all other NASD rules. Treating dually listed securities as CQS securities under NASD rules is consistent with their continuing status as CQS securities under the CTA, CQ, and ITS national market system, as described above. This interpretation also preserves the status quo and avoids creating potential confusion for investors and market participants that currently trade these securities on the Nasdaq InterMarket.

For example, Nasdaq shall continue to honor the trade halt authority of the primary market under the CQ and CT Plans. NASD Rule 4120(a)(2) and (3) governing CQS securities shall apply to dually listed securities, whereas NASD Rule 4120(a)(1), (4), (5), (6), and (7) shall not. SEC Rule 10a–1 governing short sales of CQS securities shall continue to apply to dually listed securities, rather

than NASD Rule 3350 governing short sales of Nasdaq listed securities. Market makers in dually listed securities shall retain all obligations imposed by the NASD Rule 5200, 6300, and 6400 Series regarding quoting, trading, and transaction reporting of CQS securities rather than assuming the obligations appurtenant to quoting, trading, and transaction reporting of Nasdaq listed securities. The fees applicable to CQS securities set forth in NASD Rule 7010 shall continue to apply to dually listed issues.

* * * * *

4420. Quantitative Designation Criteria

In order to be designated for the Nasdaq [National] *Global* Market, an issuer shall be required to substantially meet the criteria set forth in paragraphs (a), (b), (c), (d), (e), (f), (g), (h), (i), (j), (k), (l) or (m) below. Initial Public Offerings substantially meeting such criteria are eligible for immediate inclusion in the Nasdaq [National] *Global* Market upon prior application and with the written consent of the managing underwriter that immediate inclusion is desired. All other qualifying issues, excepting special situations, are included on the next inclusion date established by Nasdaq.

(a)–(e) No change.

(f) Other Securities.

(1) No change.

(2) Issuers of securities designated pursuant to this paragraph [(e)] (*f*) must be listed on the Nasdaq [National] *Global* Market or the New York Stock Exchange (NYSE) or be an affiliate of a company listed on the Nasdaq [National] *Global* Market or the NYSE; provided, however, that the provisions of Rule 4450 will be applied to sovereign issuers of ''other'' securities on a case-by-case basis.

(3) No change.

(g) Nasdaq will consider designating as Nasdaq [National] *Global* Market securities Selected Equity-linked Debt Securities (SEEDS) that generally meet the criteria of this paragraph (g). SEEDS are limited-term, non-convertible debt securities of an issuer where the value of the debt is based, at least in part, on the value of another issuer's common stock or non-convertible preferred stock (or sponsored American Depositary Receipts (ADRs) overlying such equity securities).

(1) Issuer Listing Standards.

(A) The issuer of a SEEDS must be an entity that:

(i) Is listed on the Nasdaq [National] *Global* Market or the New York Stock Exchange (NYSE) or is an affiliate of a company listed on the Nasdaq [National] *Global* Market or the NYSE; provided, however, that the provisions of Rule 4450 will be applied to sovereign issuers of SEEDS on a case-by-case basis; and

(ii) No change.

(B) In addition, the market value of a SEEDS offering, when combined with the market value of all other SEEDS offerings previously completed by the issuer and traded on the Nasdaq [National] *Global* Market or a national securities exchange, may not be greater than 25 percent of the issuer's net worth at the time of issuance.

(2) No change.

(3) Minimum Standards Applicable to the Linked Security.

An equity security on which the value of the SEEDS is based must:

(A) No change.

(B) Be issued by a company that has a continuous reporting obligation under the Act, and the security must be listed on the Nasdaq [National] *Global* Market or a national securities exchange and be subject to last sale reporting; and

(C) No change.

(4)–(5) No change.

(h) Units.

(1) Initial and Continued Inclusion Requirements.

(a) No change.

(b) All debt components of a unit, if any, shall meet the following requirements:

(i) No change.

(ii) the issuer of the debt security must have equity securities listed on the Nasdaq [National] *Global* Market; and

(iii) No change.

(c) No change.

(2) No change.

(3) Disclosure Requirements for Units.

Each Nasdaq [National] *Global* Market issuer of units shall include in its prospectus or other offering document used in connection with any offering of securities that is required to be filed with the Commission under the federal securities laws and the rules and regulations promulgated thereunder a statement regarding any intention to delist the units immediately after the minimum inclusion period. The issuer of a unit shall further provide information regarding the terms and conditions of the components of the unit (including information with respect to any original issue discount or other significant tax attributes of any component) and the ratio of the components comprising the unit. An issuer shall also disclose when a component of the unit is separately listed on Nasdaq.

These disclosures shall be made on the issuer's website, or if it does not maintain a website, in its annual report provided to unit holders. An issuer shall also immediately publicize through, at a minimum, a public announcement through the news media, any change in the terms of the unit, such as changes to the terms and conditions of any of the components (including changes with respect to any original issue discount or other significant tax attributes of any component), or to the ratio of the components within the unit. Such public notification shall be made as soon as practicable in relation to the effective date of the change.

(i)–(m) No change.

4425. Nasdaq Global Select Market

(a) An issuer that applies for listing on the Nasdaq Global Market and meets the requirements for initial listing contained in Rule 4426 shall be listed on the Nasdaq Global Select Market.

(b) Each October, beginning in October 2007, Nasdaq will review the qualifications of all securities listed on the Nasdaq Global Market that are not included in the Nasdaq Global Select Market. Any security that meets the requirements for initial listing on the Nasdaq Global Select Market contained in Rule 4426 at the time of this review will be transferred to the Global Select Market the following January, provided it meets the continued listing criteria at that time. An issuer will not owe any application or entry fees in connection with such a transfer.

(c) At any time, an issuer may apply to transfer a security listed on the Nasdaq Global Market to the Nasdaq Global Select Market. Such an application will be approved and effected as soon as practicable if the security meets the requirements for initial listing contained in Rule 4426. An issuer will not owe any application or entry fees in connection with such a transfer.

(d) At any time, an issuer may apply to transfer a security listed on the Nasdaq Capital Market to the Nasdaq Global Select Market. Such an application will be approved and effected as soon as practicable if the security meets the requirements for initial listing contained in Rule 4426. An issuer transferring from the Nasdaq Capital Market to the Nasdaq Global Select Market will be required to pay the applicable fees contained in Rule 4510.

(e) After initial inclusion on the Nasdaq Global Select Market, an issuer will remain on the Nasdaq Global Select Market provided it continues to meet the applicable requirements of the Rule 4300 and 4400 Series, including the qualitative requirements of Rule 4350 and IM–4300.

(f) Notwithstanding any provision to the contrary, the securities of any issuer

that is non-compliant with a qualitative listing requirement that does not provide for a grace period, or where Nasdaq staff has raised a public interest concern, will not be permitted to transfer to the Global Select Market until the underlying deficiency is resolved. In addition, any security that is below a quantitative continued listing requirement for the Nasdaq Global Market, even if the issuer has not been below the requirement for a sufficient period of time to be considered non-compliant, and any issuer in a grace or compliance period with respect to a quantitative listing requirement, will not be allowed to transfer from the Nasdaq Global or Capital Markets to the Nasdaq Global Select Market until the underlying deficiency is resolved. Nor will any issuer before a Nasdaq Listing Qualifications Panel be allowed to transfer to the Global Select Market until the underlying deficiency is resolved. An issuer that is in a grace or compliance period with respect to a qualitative listing standard, such as the cure period for filling an audit committee vacancy, will be allowed to transfer to the Global Select Market, subiect to the continuation of that grace period.

IM–4425 Launch of the Nasdaq Global Select Market

In connection with the initial launch of the Nasdaq Global Select Market in July 2006, Nasdaq will review all issuers' qualifications and assign qualified Global Market companies to the new Global Select segment. In addition, qualified Capital Market companies will be given the opportunity to be included in the new segment. In connection with this initial transfer to the Global Select Market, Nasdaq will begin to make its assessment using the most recent financial data filed as of April 28, 2006, and market data as of April 28, 2006. Nasdaq will treat as an IPO any company that initially listed as an IPO since May 1, 2005 for purposes of the liquidity tests, because these companies would have insufficient market data to establish a 12-month trading history and may have had insufficient time to satisfy the market value of public float requirement applicable to other companies. Similarly, for purposes of the market capitalization requirements of Rules 4426(c)(2) and (c)(3), anv company that initially listed as an IPO since May 1, 2005 must have the applicable average market capitalization from the date of listing. Nasdaq also notes that certain Nasdaq-listed issuers that qualify to initially list on the New Yark Stock Exchange (NYSE) will not be eligible to list on the Global Select Market. Nasdaq will allow (but not require) any Nasdaq-listed issuer that meets the NYSE initial listing standards as of July 2006 but that does not qualify for the Global Select segment when it is adopted to be included in the Global Select Market, subiect to a grace period until January 1, 2008 to achieve compliance with all listing criteria for the Global Select Market. Any issuer that avails itself of this grace period that has not achieved compliance with all listing criteria for the Global Select Market by January 1, 2008 will be moved to the Nasdaq Global Market. In addition, any issuer that avails itself of this grace period will remain subiect to delisting in the event it fails to satisfy any of the continued listing requirements far the Nasdaq Global Market.

4426. Nasdaq Global Select Market Listing Requirements

(a) For inclusion in the Nasdaq Global Select Market, an issuer must meet the requirements of paragraphs (b), (c), and (d) of this rule, and all applicable requirements of the Rule 4300 and 4400 Series, including the qualitative requirements of Rule 4350 and IM–4300. Rule 4427 provides guidance about computations made under this Rule 4426.

(b) Liquidity Requirements.

(1) The security must demonstrate either:

(i) A minimum of 550 beneficial shareholders, and

(ii) An average monthly trading volume over the prior 12 months of at least 1,100,000 shares per month; or

(B) A minimum of 2,200 beneficial shareholders; or

(C) A minimum of 450 beneficial shareholders, in the case of: (i) an issuer listing in connection with its emergence from a bankruptcy or reorganization proceeding; or (ii) an issuer that is affiliated with another company listed on the Global Select Market.

(2) The security must have at least 1,250,000 publicly held shares; and

(3) The publicly held shares must have either:

(A) A market value of at least $110 million; or

(B) A market value of at least $100 million, if the issuer has stockholders' equity of at least $110 million; or

(C) A market value of at least $70 million in the case of: (i) an issuer listing in connection with its initial public offering; (ii) an issuer that is affiliated with, or a spin-off from, another company listed on the Global Select Market; and (iii) a closed end management investment company registered under the Investment Company Act of 1940.

(c) Financial Requirements. An issuer, other than a closed end management investment company, must meet the requirements of one of subparagraphs (1), (2) or (3) of this paragraph.

(1) The issuer must have:

(A) Aggregate income from continuing operations before income taxes of at least $11 million over the prior three fiscal years:

(B) Positive income from continuing operations before income taxes in each of the prior three fiscal years: and

(C) At least $2.2 million income from continuing operations before income taxes in each of the two most recent fiscal years; or

(2) The issuer must have:

(A) Aggregate cash flows of at least $27.5 million over the prior three fiscal years;

(B) Positive cash flows in each of the prior three fiscal years; and

(C) Both:

(i) Average market capitalization of at least $550 million over the prior 12 months; and

(ii) Total revenue of at least $110 million in the previous fiscal year; or

(3) The issuer must have both:

(A) Average market capitalization of at least $850 million over the prior 12 months; and

(B) Total revenue of at least $90 million in the previous fiscal year.

(d) Price. For inclusion in the Nasdaq Global Select Market, an issuer not listed on the Nasdaq Global Market shall have a minimum bid price of $5 per share.

(e) Closed End Management Investment Companies.

(1) A closed end management investment company registered under the Investment Company Act of 1940 shall not be required to meet paragraph (c) of this Rule 4426.

(2) In lieu of the requirement in paragraph (b)(3) of this Rule 4426, a closed end management investment company that is listed concurrently with other closed end management investment companies that have a common investment adviser or whose investment advisers are ''affiliated persons,'' as defined in the Investment Company Act of 1940 (a ''Fund Family'') shall be eligible if: (A) the total market value of publicly held shares in such Fund Family is at least $220 million; (B) the average market value of publicly held shares for all funds in the Fund Family is $50 million; and (C) each fund in the Fund Family has a market value of publicly held shares of at least $35 million.

(f) Other Classes of Securities. If the common stock of an issuer is included

in the Nasdaq Global Select Market, any other security of that same issuer, such as other classes of common or preferred stock, that qualify for listing on the Nasdaq Global Market shall also be included in the Global Select Market.

Rule 4427. Computations and Definitions

(a) In computing the number of publicly held shares for purposes of Rule 4426(b), Nasdaq will not consider shares held by an officer, director or 10% shareholder of the issuer.

(b) In calculating income from continuing operations before income taxes for purposes of Rule 4426(c)(1), Nasdaq will rely on an issuer's financial information as filed with the Commission in the issuer's most recent periodic report and/or registration statement.

(c) In calculating cash flows for purposes of Rule 4426(c)(2). Nasdaq will rely on the net cash provided by operating activitives. as reported in the issuer's financial information as filed with the Commission in the issuer's most recent periodic report and/or registration statement, excluding changes in working capital or in operating assets and liabilities.

(d) If an issuer does not have three years of publicly reported financial data, it may qualify under Rule 4426(c)(I) if it has:

(1) Reported aggregate income from continuing operations before income taxes of at least $11 million and

(2) Positive income from continuing operations before income taxes in each of the reported fiscal years.

(e) If an issuer does not have three years of publicly reported financial data, it may qualify under Rule 4426(c)(2) if it has:

(1) Reported aggregate cash flows of at least $27.5 million and

(2) Positive cash flows in each of the reported fiscal years.

(f) A period of less than three months shall not be considered a fiscal year, even if reported as a stub period in the issuer's publicly reported financial statements.

(g) For purposes of Rule 4426, an issuer is affiliated with another company if that other company, directly or indirectly though one or more intermediaries, controls. is controlled by, or is under common control of the issuer. Control, for these purposes. means having the ability to exercise significant influence. Ability to exercise significant influence will be presumed to exist where the parent or affiliated company directly or indirectly owns 20% or more of the other company's voting securities, and also can be indicated by representation on the board of directors, participation in policy making processes, material intercompany transactions, interchange of managerial personnel, or technological dependency.

(h) In the case of an issuer listing in connection with its initial public offering, compliance with the market capitalization requirements of Rules 4426(c)(2) and (c)(3) will be based on the company's market capitalization at the time of listing.

4430. Limited Partnership Rollup Designation Criteria

In addition to meeting the quantitative criteria for Nasdaq [National] *Global* Market inclusion, an issuer that is formed as a result of a limited partnership rollup transaction, as defined in Rule 4200, must meet the criteria set forth below in order to be designated:

(a)–(b) No change.

4440. Registration Standards

(a) In addition to meeting the quantitative criteria and the limited partnership rollup criteria, if applicable, for Nasdaq [National market] *Global Market* inclusion, the issue must also be:

(1)–(4) No Change

(5) Registered under Section 12(b) of the Act and listed on a national securities exchange, or admitted to unlisted trading privileges on an exchange, provided that:

(A) No change.

(B) Such exchange shall permit Nasdaq market makers telephone access to exchange trading facilities with respect to transactions in [NNM] *NGM* securities to the same extent that exchange market makers are permitted access to Nasdaq market makers; and

(C) No change.

(b) Foreign securities and American Depositary Receipts where either the issuer is required to file reports pursuant to Section 15(d) of the Act or the security is exempt from registration under Section 12(g) of the Act by reason of the applicability of SEC Rule 12g3–2(b) are not eligible for designation in the Nasdaq [National] *Global* Market.

4450. Quantitative Maintenance Criteria

After designation as a Nasdaq [National] *Global* Market security, a security must substantially meet the criteria set forth in paragraphs (a) or (b), and (c), (d), (e), (f), (g), (h) or (i) below to continue to be designated as a national market system security. A security maintaining its designation under paragraph (b) need not also be in compliance with the quantitative maintenance criteria in the Rule 4300 series.

(a)–(h) No change.

(i) Transfers between The Nasdaq [National] *Global* and Capital Markets For Bid Price Deficient Issuers

(1) If a [National] *Global* Market issuer has not been deemed in compliance prior to the expiration of the compliance period for bid price provided in Rule 4450(e)(2), it may transfer to The Nasdaq Capital Market, provided that it meets all applicable requirements for initial inclusion on the Capital Market set forth in Rule 4310(c) or Rule 4320(e), as applicable, other than the minimum bid price requirement. A Nasdaq [National] *Global* Market issuer transferring to The Nasdaq Capital Market must pay the entry fee set forth in Rule 4520(a). The issuer may also request a hearing to remain on The Nasdaq National Market pursuant to the Rule 4800 Series.

(2) Following a transfer to The Nasdaq Capital Market pursuant to paragraph (1), a Nasdaq [National] *Global* Market issuer will be afforded the remainder *of* any compliance period set forth in Rule 4310(c)(8)(D) or Rule 4320(e)(2)(E)(ii) as if the issuer had been listed on The Nasdaq Capital Market. The compliance periods afforded by this rule and any time spent in the hearing process will be deducted in determining the length of the remaining applicable compliance periods on The Nasdaq Capital Market.

* * * * *

4510. The Nasdaq [National] *Global* Market

(a) Entry Fee

(1) An issuer that submits an application for inclusion of any class of its securities (not otherwise identified in this Rule 4500 series) in The Nasdaq [National] *Global* Market, shall pay to The Nasdaq Stock Market, Inc. a fee calculated on total shares outstanding, according to the following schedule. This fee will be assessed on the date of entry in The Nasdaq [National] *Global* Market, except for $5,000 which represents a non-refundable, application fee, and which must be submitted with the issuer's application.

Up to 30 million shares	$100,000
30+ to 50 million shares	125,000
Over 50 million shares	150,000

(2) Total shares outstanding means the aggregate of all classes of equity securities to be included in The Nasdaq [National] *Global* Market as shown in the issuer's most recent periodic report or in more recent information held by Nasdaq or, in the case of new issues, as shown in the offering circular, required to be filed with the issuer's appropriate

regulatory authority. In the case of foreign issuers, total shares outstanding shall include only those shares issued and outstanding in the United States.

(3) A closed-end management investment company registered under the Investment Company Act of 1940, as amended (a ''Closed-End Fund''), that submits an application for inclusion of a class of securities in The Nasdaq [National] *Global* Market shall pay to the Nasdaq Stock Market, Inc. an entry fee of $5,000 (of which $1,000 represents a non-refundable, application fee).

(4) An issuer that submits an application for inclusion of any class of rights in The Nasdaq [National] *Global* Market, shall pay, at the time of its application, a non-refundable application fee of $I,000 to The Nasdaq Stock Market, Inc.

(5)–(6) No change.

(7) The fees described in this Rule 4510(a) shall not be applicable with respect to any securities that (i) are listed on a national securities exchange but not listed on Nasdaq, if the issuer of such securities transfers their listing exclusively to the Nasdaq [National] *Global* Market; or (ii) are listed on the New York Stock Exchange and Nasdaq, if the issuer of such securities ceases to maintain their listing on the New York Stock Exchange and the securities instead are designated as national market securities under the Rule 4400 Series.

(8) No change.

(9) An issuer that transfers its listing from The Nasdaq Capital Market to The Nasdaq [National] *Global* Market shall pay the entry fee described in this Rule 4510(a) less the entry fee that was previously paid by the issuer to Nasdaq in connection with listing on The Nasdaq Capital Market. Such issuer is not required to pay the application fee described in Rule 4510(a) in connection with the application to transfer listing.

(10) An issuer that submits an application for listing on The Nasdaq Capital Market, but prior to listing revises its application to seek listing on The Nasdaq [National] *Global* Market, is not required to pay the application fee described in Rule 4510(a) in connection with the revised application.

(b) Additional Shares.

No change.

(c) Annual Fee—Domestic and Foreign Issues.

(1) The issuer of each class of securities (not otherwise identified in this Rule 4500 series) that is a domestic or foreign issue listed in The Nasdaq [National] *Global* Market shall pay to The Nasdaq Stock Market, Inc. an annual fee calculated on total shares outstanding according to the following schedule:

Up to 10 million shares	$24,500
10+ to 25 million shares	30,500
25+ to 50 million shares	34,500
50+ to 75 million shares	44,500
75+ to 100 million shares	61,750
Over 100 million shares	75,000

(2) No change.

(3) If a class of securities is removed from the Nasdaq [National] *Global* Market that portion of the annual fees for such class of securities attributable to the months following the date of removal shall not be refunded, [expect] *except* such portion shall be applied to The Nasdaq Capital Market fees for that calendar year.

(4) Total shares outstanding means the aggregate of all classes of equity securities included in the Nasdaq [National] *Global* Market as shown in the issuer's most recent periodic report required to be filed with the issuer's appropriate regulatory authority or in more recent information held by Nasdaq. In the case of foreign issuers, total shares outstanding shall include only those shares issued and outstanding in the United States.

(5) No change.

(d) Annual Fee—American Depositary Receipts (ADRs) and Closed-End Funds.

(1) The issuer of each class of securities that is an ADR listed in The Nasdaq [National] *Global* Market shall pay to The Nasdaq Stock Market, Inc. an annual fee calculated on ADRs outstanding according to the following schedule not to exceed $30,000 per issuer:

Up to 10 million ADRs	$21,225
10+ to 25 million ADRs	26,500
25+ to 50 million ADRs	29,820
Over 50 million ADRs	30,000

(2) ADRs outstanding means the aggregate of all classes of ADRs included in The Nasdaq [National] *Global* Market as shown in the issuer's most recent periodic report required to be filed with the issuer's appropriate regulatory authority or in more recent information held by Nasdaq.

(3) A Closed-End Fund listed in The Nasdaq [National] *Global* Market shall pay to The Nasdaq Stock Market, Inc. an annual fee calculated based on total shares outstanding according to the following schedule:

Up to 5 million shares	$15,000
5+ to 10 million shares	17,500
10+ to 25 million shares	20,000
25+ to 50 million shares	22,500
50+ to 100 million shares	30,000
100+ to 250 million shares	50,000
Over 250 million shares	75,000

(4) For the purpose of determining the total shares outstanding, fund sponsors may aggregate shares outstanding of all Closed-End Funds in the same fund family listed in The Nasdaq [National] *Global* Market or The Nasdaq Small Cap Market, as shown in the issuer's most recent periodic reports required to be filed with the appropriate regulatory authority or in more recent information held by Nasdaq. The maximum annual fee applicable to a fund family shall not exceed $75,000. For purposes of this rule, a ''fund family'' is defined as two or more Closed-End Funds that have a common investment adviser or have investment advisers who are ''affiliated persons'' as defined in Section 2(a)(3) of the Investment Company Act of 1940, as amended.

(5) No change.

(6) If a class of securities is removed from the Nasdaq [National] *Global* Market, that portion of the annual fees for such class of securities attributable to the months following the date of removal shall not be refunded, except such portion shall be applied to The Nasdaq Capital Market fees for that calendar year.

(e)–(f) No change.

4520. The Nasdaq Capital Market

(a) Entry Fee

(1)–(6) No change.

(7) The fees described in this Rule 4520(a) shall not be applicable with respect to any securities that (i) are listed on a national securities exchange but not listed on Nasdaq, if the issuer of such securities transfers their listing exclusively to the Nasdaq [National] *Capital* Market; or (ii) are listed on the New York Stock Exchange and Nasdaq, if the issuer of such securities ceases to maintain their listing on the New York Stock Exchange and the securities instead are designated under the plan applicable to Nasdaq Capital Market securities.

(8) No change.

(9) An issuer that submits an application for listing on The Nasdaq [National] *Global* Market, but prior to listing revises its application to seek listing on The Nasdaq Capital Market, is not required to pay the application fee described in Rule 4520(a) in connection with the revised application.

(b) No change.

(c) Annual Fee.

(1)–(4) No change.

(5) If a class of securities is removed from The Nasdaq Capital Market, that portion of the annual fees for such class of securities attributable to the months following the date of removal shall not be refunded, except such portion shall be applied to Nasdaq [National] *Global* Market fees for that calendar year.

(6) No change.

(7) Notwithstanding paragraph (6), for the purpose of detennining the total shares outstanding, fund sponsors may aggregate shares outstanding of all Closed-End Funds in the same fund family listed in The Nasdaq [National] *Global* Market or The Nasdaq Capital Market, as shown in the issuer's most recent periodic reports required to be filed with the appropriate regulatory authority or in more recent infonnation held by Nasdaq. The maximum, annual fee applicable to a fund family shall not exceed $75,000. For purposes of this rule, a ''fund family'' is defined as two or more Closed-End Funds that have a common investment adviser or have investment advisers who are ''affiliated persons'' as defined in Section 2(a)(3) of the Investment Company Act of 1940, as amended.

(8) No change.

(d)–(e) No change.

4530. Other Securities

(a) Application Fee and Entry Fee.

(1) When an issuer submits an application for inclusion of any Other Security or SEEDS in the Nasdaq [National] *Global* Market qualified for listing under Rule 4420(f) or 4420(g), it shall pay a non-refundable Application Fee of $1,000.

(2) When an issuer submits an application for inclusion of any Other Security or SEEDS in the Nasdaq [National] *Global* Market qualified for listing under Rule 4420(f) or 4420(g), it shall pay an Entry Fee calculated based on total shares outstanding according to the following schedule:

Up to 1 million shares	$5,000
1+ to 2 million shares	10,000
2+ to 3 million shares	15,000
3+ to 4 million shares	17,500
4+ to 5 million shares	20,000
5+ to 6 million shares	22,500
6+ to 7 million shares	25,000
7+ to 8 million shares	27,500
8+ to 9 million shares	30,000
9+ to 10 million shares	32,500
10+ to 15 million shares	37,500
Over 15 million shares	45,000

The applicable Entry Fee shall be reduced by any Entry Fees paid previously in connection with the initial inclusion during the current calendar year of any of the issuer's Other Securities and SEEDS in the Nasdaq [National] *Global* Market.

(3) For the sole purpose of determining the Entry Fee, total shares outstanding means the aggregate of all classes of Other Securities and SEEDS of the issuer to be included in the Nasdaq [National] *Global* Market in the current calendar year as shown in the issuer's most recent periodic report or in more recent information held by Nasdaq or, in the case of new issues, as shown in the offering circular, required to be filed with the issuer's appropriate regulatory authority.

(4)–(5) No change.

(b) Annual Fee.

(1) The issuer of Other Securities or SEEDS qualified under Rule 4420(f) or 4420(g) for listing on the Nasdaq [National] *Global* Market shall pay to The Nasdaq Stock Market, Inc. an Annual Fee calculated based on total shares outstanding according to the following schedule:

Up to 5 million shares	$15,000
5+ to 10 million shares	17,500
10+ to 25 million shares	20,000
25+ to 50 million shares	22,500
Over 50 million shares	30,000

(2) No change.

(3) For the sole purpose of determining the Annual Fee, total shares outstanding means the aggregate of all classes of Other Securities and SEEDS of the issuer included in the Nasdaq [National] *Global* Market, as shown in the issuer's most recent periodic report required to be filed with the issuer's appropriate regulatory authority or in more recent information held by Nasdaq.

4540. Portfolio Depository Receipts and Index Fund Shares

(a) Entry Fee.

(1) When an issuer submits an application for listing a series of Portfolio Depository Receipts or Index Fund Shares in The Nasdaq [National] *Global* Market, it shall pay to The Nasdaq Stock Market, Inc. a listing fee of $5,000 (which shall include a $1,000 non-refundable processing fee).

(2)–(3) No change.

(b) Annual Fee.

(1) The issuer of a series of Portfolio Depository Receipts or Index Fund Shares listed on The Nasdaq [National] *Global* Market shall pay to The Nasdaq Stock Market, Inc. an annual fee calculated on total shares outstanding according to the following schedule:

Up to 1 million shares	$6,500
1+ to 2 million shares	7,000
2+ to 3 million shares	7,500
3+ to 4 million shares	8,000
4+ to 5 million shares	8,500
5+ to 6 million shares	9,000
6+ to 7 million shares	9,500
7+ to 8 million shares	10,000
8+ to 9 million shares	10,500
9+ to 10 million shares	11,000
10+ to 11 million shares	11,500
11+ to 12 million shares	12,000
12+ to 13 million shares	12,500
13+ to 14 million shares	13,000
14+ to 15 million shares	13,500
15+ to 16 million shares	14,000
Over 16 million shares	14,500

(2) Total shares outstanding means the aggregate number of shares in all series of Portfolio Depository Receipts or Index Fund Shares to be included in The Nasdaq [National] *Global* Market as shown in the issuer's most recent periodic report required to be filed with the issuer's appropriate regulatory authority or in more recent information held by Nasdaq.

(3) No change.

4550. Written Interpretations of Nasdaq Listing Rules

(a) An issuer listed on The Nasdaq Capital Market or The Nasdaq [National] *Global* Market may request from Nasdaq a written interpretation of the Rules contained in the 4000 through 4500 Series. In connection with such a request, the issuer must submit to The Nasdaq Stock Market, Inc. a non-refundable fee of $2,000. A response to such a request generally will be provided within four weeks from the date Nasdaq receives all information necessary to respond to the request.

(b)–(e) No change.

* * * * *

4612. Primary Nasdaq Market Maker Standards

(a) A member registered as a Nasdaq market maker pursuant to Rule 4611 may be deemed to be a Primary Nasdaq Market Maker in Nasdaq [National] *Global* Market securities if the market maker complies with threshold standards (as established and published by the Association from time to time) in the following qualification criteria:

(1)–(3) No change.

(b) A market maker for a Nasdaq [National] *Global* Market security must satisfy the threshold standards in at least two of the criteria in paragraph (a) in order to be designated a Primary Nasdaq Market Maker in that security; provided however, that if a market maker satisfies only one of the criteria, it may qualify as a Primary Nasdaq Market Maker if it also accounts for a threshold level of proportionate volume in the security (as established and published by the Association from time to time).**

(c)–(f) No change.

(g) In registration situations:

(1) To register and immediately become a Primary Nasdaq Market Maker in a Nasdaq [National] *Global* Market security, a member must be a Primary Nasdaq Market Maker in 80% of the securities in which it has registered. If the market maker is not a Primary Nasdaq Market Maker in 80% of its stocks, it may qualify as a Primary

**No change.

Nasdaq Market Maker in that stock if the market maker registers in the stock as a regular Nasdaq market maker and satisfies the qualification criteria for the next review period.

(2) Notwithstanding paragraph (g)(1) above, after an offering in a stock has been publicly announced or a registration statement has been filed, no market maker may register in the stock as a Primary Nasdaq Market Maker unless it meets the requirements set forth below:

(A) For secondary offerings:

(i) The secondary offering has become effective and the market maker has satisfied the qualification criteria in the time period between registering in the security and the offering becoming effective; provided, however, that if the member is a manager or co-manager of the underwriting syndicate for the secondary offering and it is a PMM in 80% or more of the Nasdaq [National] *Global* Market securities in which it is registered, the member is eligible to become a PMM in the issue prior to the effective date of the secondary offering regardless of whether the member was a registered market maker in the stock before the announcement of the secondary offering; or

(ii) No change.

(B)–(C) No change.

(3) No change.

(h) No change.

4613. Character of Quotations

(a) Quotation Requirements and Obligations.

(1) Two-Sided Quote Obligation. For each security in which a member is registered as a market maker, the member shall be willing to buy and sell such security for its own account on a continuous basis and shall enter and maintain a two-sided quotation (''Principal Quote''), which is attributed to the market maker by a special maker participant identifier (''MPID'') and is displayed in the Nasdaq Quotation Montage at all times, subject to the procedures for excused withdrawal set forth in Rule 4619.

(A) No change.

(B) Minimum Price Variation—The minimum quotation increment for Nasdaq [National] *Global* Market and Capital Market securities shall be $0.01 for quotations priced at or above $1.00 per share and $0.0001 for quotations priced below $1.00 per share; provided, however, that if the Securities and Exchange Commission (''SEC'') permits, with respect to any security, the display, rank or acceptance of quotations priced at or above $1.00 per share in an increment smaller than $0.01, then the minimum quotation increment for such a security shall be the minimum permitted by the SEC or $0.0001, whichever is greater. Quotations failing to meet this standard shall be rejected.

(2)–(3) No change.

(b)–(e) No change.

* * * * *

4630. Reporting Transactions in Nasdaq [National] *Global* Market Securities

This Rule 4630 Series applies to the reporting by members of transactions in Nasdaq [National] *Global* Market securities (''designated securities'') to the Nasdaq Market Center.

* * * * *

4652. Transaction Reporting

(a)–(c) No change.

(d) Procedures for Reporting Price and Volume *

No change.

(e)–(g) No change.

* * * * *

4701. Definitions

(a)–(ee) No change.

(ff) The term ''UTP Exchange'' shall mean any registered national securities exchange that elects to participate in the Nasdaq Market Center and that has unlisted trading privileges in Nasdaq [National] *Global* Market securities pursuant to the Joint Self-Regulatory Organization Plan Governing the Collection, Consolidation and Dissemination of Quotation and Transaction Information for Exchange-Listed Nasdaq/National Market System Securities Traded on Exchanges on an Unlisted Trading Privilege Basis (''Nasdaq UTP Plan'').

(gg)–(vv) No change.

* * * * *

4200A. Definitions

(a) Unless the context requires otherwise, the terms used in the Rule 4000A and Rule 6000A Series shall have the meanings below. Terms not specifically defined below shall have the meaning in NASD's By-Laws and Rules and SEC [Rule 11Aa3–1] *Regulation NMS.*

(1) No change.

(2) ''ADF-eligible security'' means a Nasdaq [National] *Global* Market, Nasdaq Capital Market security and Nasdaq Convertible Debt securities.

(3)–(4) No change.

(5) ''Nasdaq [National] *Global* Market'' or [''NNM''] *NGM* is a distinct tier of the Nasdaq Stock Market comprised of securities that meet the requirements of and are authorized as a Nasdaq [National] *Global* Market Security.

(6)–(13) No change.

(b) No change.

* * * * *

5410. Applicability

(a) For a period of time, NASD will operate two facilities for collecting trade reports for executions in Nasdaq [National] *Global* Market, Nasdaq Capital Market, and Nasdaq Convertible Debt securities (''designated securities''): The Nasdaq Stock Market and the Alternative Display Facility (''ADF''). Nasdaq will operate the Nasdaq Market Center (including its trade reporting service), and NASD, through the ADF, will operate Trade Reporting and Comparison Service (''TRACS''). This Rule 5400 Series establishes the rules for determining which member must report a trade and whether a trade must be reported to the Nasdaq Market Center, pursuant to the Rule 4630, 4640, 4650 and 6100 Series or TRACS, pursuant to the Rule 4630A and 6100A Series.

(b) No change.

* * * * *

6110. Definitions

(a) The term ''Reportable Security'' shall mean all Nasdaq [National] *Global* Market and Nasdaq Capital Market securities, all Consolidated Quotation Service (CQS) securities traded in the over-the-counter market, all OTC Equity Securities as defined in Rule 6600, and all Direct Participation Programs as defined in Rule 6910.

(b)–(q) No change.

6120. Trade Reporting Participation Requirements

(a) Mandatory Participation for Clearing Agency Members

(1)–(5) No change.

(6) Upon compliance with the conditions specified in subparagraphs (A)–(E) below, access to and participation in the trade reporting service of the Nasdaq Market Center may be granted to a national securities exchange that trades Nasdaq [National] *Global* Market or Capital Market securities on an unlisted trading privileges basis (''UTP Exchange''). The terms and conditions of such access and participation, including available functionality and applicable rules and fees, shall be set forth in and governed by a UTP Exchange ACT Participant Application Agreement. Such access may be made available on terms that differ from the terms applicable to members but that do not unreasonably discriminate among national securities exchanges.

(A)–(E) No change.

(7) No change

* For examples of reporting procedures, refer to the Rule 4630 Series, Reporting Transactions in Nasdaq [National] *Global* Market Securities.

(b) No change.

* * * * *

IM–6130. Trade Reporting of Short Sales

The NASD's short sale rule (Short Sale Rule or Rule 3350) generally prohibits members from effecting short sales in [NNM] *NGM* securities at or below the inside bid when the current inside bid is below the previous inside bid. Rule 6130(d)(6) requires that members indicate on ACT reports whether a transaction is a short sale or a short sale exempt transaction (''ACT short sale reporting requirements''). Rule 6130 explicitly requires members to file ACT reports not just for [NNM] *NGM* securities transactions, but for other securities transactions, including transactions in exchange-listed, Capital Market, convertible debt, OTC Bulletin Board, and OTC equity securities. Thus, all short sale transactions in these securities reported to ACT must carry a ''short sale'' indicator (or a ''short sale exempt'' indicator if it is a short sale transaction in an [NNM] *NGM* or exchange-listed security that qualifies for an exemption from Rule 3350 or SEC Rule 10a–1).

* * * * *

6150. Risk Management Functions

(a) No change.

(b) If a clearing broker voluntarily uses the Nasdaq Market Center risk management service, the Nasdaq Market Center system will provide the following risk management capabilities to clearing brokers that have executed an ACT Participant Risk Management Agreement:

(1) No change.

(2) Gross Dollar Thresholds (''Super Caps'') and Sizeable Limits.

Clearing brokers will be able to establish, on an inter-day or intra-day basis, gross dollar thresholds (also known as ''Super Caps'') for purchases and sales for their correspondent executing brokers. When any of a correspondent's gross dollar thresholds are exceeded, notice will be furnished to the clearing broker, and any trade in excess of an applicable ''sizeable limit'' that is negotiated by the correspondent will be subject to review by the clearing broker until such time as the correspondent's trading activity no longer exceeds a gross dollar threshold. Specifically, the clearing broker will have 15 minutes from execution to review any single trade negotiated by the correspondent that equals or exceeds the applicable sizeable limit in order to decide to act as principal for the trade or to decline to act as principal. If the clearing broker does not affirmatively accept or decline the ''sizeable trade,'' at the end of 15 minutes the system will act in accordance with pre-established processing criteria, as described below.

(A) ACT Workstation Users.

(i) Clearing brokers that use the ACT Workstation may establish gross dollar thresholds and sizeable limits for each of their correspondent executing brokers. They may establish different gross dollar thresholds and sizeable limits for each type of security (i.e., Nasdaq [National] *Global* Market, Nasdaq Capital Market, Consolidated Quotations Service, or OTC Bulletin Board), as well as an aggregate gross dollar threshold and sizeable limit for all types of securities.

(ii)–(iii) No change.

(B) Other Nasdaq Market Center Risk Management Users.

(i) Clearing brokers that do not use the ACT Workstation may establish aggregate gross dollar thresholds for each of their correspondent executing brokers, but may not establish gross dollar thresholds for each type of security (i.e., Nasdaq [National] *Global* Market, Nasdaq Capital Market, Consolidated Quotations Service, or OTC Bulletin Board).

(ii)–(iii) No change.

(3)–(5) No change.

(6) Single Trade Limit.

Clearing brokers will have 15 minutes from trade report input to the Nasdaq Market Center to review any single trade executed by their correspondent executing brokers that equals or exceeds a pre-established limit in order to decide to act as principal for the trade or to decline to act as principal. If, however, the clearing firm does not affirmatively accept or decline the trade, at the end of 15 minutes the system will act in accordance with pre-established processing criteria, as described below.

(A) ACT Workstation Users. Clearing brokers that use the ACT Workstation may establish single trade limits for each of their correspondent executing brokers, and may establish different limits for each type of security (i.e., Nasdaq [National] *Global* Market, Nasdaq Capital Market, Consolidated Quotations Service, or OTC Bulletin Board). Such clearing brokers may also establish the default processing criteria that will apply to trades that exceed the single trade limit after 15 minutes if the clearing broker does not affirmatively accept or decline the trade; the clearing broker may specify that such trades should be either automatically declined or automatically subjected to normal processing in which the clearing broker will act as principal to clear the trades.

(B) No change.

6110A. Definitions

(a)–(k) No change.

(l) The term ''TRACS Eligible Security'' shall mean Nasdaq [National] Global Market, Nasdaq Capital Market security and Nasdaq Convertible Debt securities.

(m)–(n) No change.

* * * * *

7010. System Services

(a)–(f) No change.

(g) Nasdaq Market Center Trade Reporting

The following charges shall be paid by the participant for use of the trade reporting service of the Nasdaq Market Center:

Transaction Related Charges:	
Reporting of transactions in Nasdaq [National] *Global* Market and Capital Market securities executed through the Nasdaq Market Center System (''Nasdaq Market Center Covered Transactions'').	
Average daily volume of transaction reports for the Nasdaq Market Center Covered Transactions during the month to which a participant is a party:	Fee per side for transaction reports of the Nasdaq Market Center Covered Transactions to which such participant is a party:
0 to 9,999	$0.029
10,000 or more	$0.00
Other reports for transactions in Nasdaq [National] *Global* Market and Capital Market securities not subject to comparison through the Nasdaq Market Center.	$0.00
Reporting of transactions in ITS Securities (as defined in Rule 5210(c)) not subject to comparison through the Nasdaq Market Center (''ITS Covered Transactions'').	

Average daily volume of media transaction reports for ITS Covered Transactions during the month (i) that are submitted to the trade reporting service of the Nasdaq Market Center automatically and in which a participant is identified as the reporting party, or (ii) that are submitted or introduced by such participant to the Nasdaq Market Center:	Fee per side for reports of ITS Covered Transactions to which such participant is a party:
0 to 5,000	$0.029
More than 5,000	$0.029 for a number of reports equal to 5,000 times the number of trading days in the month $0.00 for all remaining reports.
Reporting of all other transactions not subject to comparison through the Nasdaq Market Center.	$0.029/side.
Comparison	$0.0144/side per 100 shares (minimum 400 shares; maximum 7,500 shares).
Late Report—T+N	$0.288/side.
Query	$0.50/query.
CTCI fee	$575.00/month.
WebLink ACT or Nasdaq Workstation Post Trade	$300.00/month (full functionality) or $150.00/month (up to an average of twenty transactions per day each month) (For the purposes of this service only, a transaction is defined as an original trade entry, either on trade date or as-of transactions per month).
Risk Management Charges	$40.035/side and $17.25/month per correspondent firm (maximum $10,000/month per correspondent firm).
Corrective Transaction Charge	$0.25/Cancel, Error, Inhibit, Kill, or 'No' portion of No/Was transaction, paid by reporting side; $0.25/Break, Decline transaction, paid by each party.
ACT Workstation	$525/logon/month.

(h)–(t) No change.

(u) Nasdaq Revenue Sharing Program.

After Nasdaq earns total operating revenue sufficient to offset actual expenses and working capital needs, a percentage of all Market Participant Operating Revenue (''MPOR'') shall be eligible for sharing with Nasdaq Quoting Market Participants (as defined in Rule 4701). MPOR is defined as operating revenue that is generated by Nasdaq Quoting Market Participants. MPOR consists of transaction fees, technology fees, and market data revenue that is attributable to Nasdaq Quoting Market Participant activity in Nasdaq [National] *Global* Market and Capital Market securities. MPOR shall not include any investment income or regulatory monies. The sharing of MPOR shall be based on each Nasdaq Quoting Market Participant's pro rata contribution to MPOR. In no event shall the amount of revenue shared with Nasdaq Quoting Market Participants exceed MPOR. To the extent market data revenue is subject to year-end adjustment, MPOR revenue may be adjusted accordingly.

(v)–(w) No change.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq included statements concerning the purpose of, and basis for, the proposed rule change, as amended, and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Nasdaq has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Nasdaq proposes to rename the Nasdaq National Market as the Nasdaq Global Market to more accurately reflect the international reach and leadership of many of the companies listed on that market and the market itself.[9]

Nasdaq also proposes to create a new segment within the Nasdaq Global Market. This new segment would be known as the Nasdaq Global Select Market, and new, higher initial listing requirements would apply to companies listing onthe Nasdaq Global Select Market.[10] All listing and trading rules applicable to securities on the Nasdaq Global Market would also apply to the Nasdaq Global Select Market.

Listing Standards

As described below, issuers would be required to meet minimum liquidity measures and a financial test, as well as achieve a minimum bid price requirement.[11] Nasdaq believes that the creation of this segment would more clearly align Nasdaq's financial and liquidity listing standards with its corporate governance standards [12] and its regulatory enforcement program, as well as its trading system. While Nasdaq believes its existing standards protect investors, Nasdaq also believes that, to the extent these higher initial listing standards help attract and maintain listings on Nasdaq and identify companies that meet these high listing standards, investors would benefit.

1. Liquidity Tests

In order to qualify for the Nasdaq Global Select Market, a company would be required to demonstrate either: (1) A minimum of 550 shareholders and an average monthly trading volume over the prior 12 months of at least 1,100,000 shares per month; or (2) A minimum of 2,200 shareholders.

[9] The Nasdaq Global Market, including the Nasdaq Global Select segment described below, would be the successor to the Nasdaq National Market. As such, Nasdaq believes that all securities listed on the Nasdaq Global Market, including those on the Nasdaq Global Select Market, would be ''covered securities,'' as that term is defined in Section 18(b) of the Securities Act of 1933, 15 U.S.C. 77r(b).

[10] As described below, given that the Nasdaq Global Select Market is a segment of the Nasdaq Global Market, Nasdaq would apply the same continued listing requirements as are applicable to other companies on the Nasdaq Global Market, which are the existing listing requirements for the Nasdaq National Market.

[11] Nasdaq could deny listing to a company that meets these requirements based on public interest concerns, as described in existing NASD Rule 4300 and NASD IM–4300.

[12] Companies on the Nasdaq Global Select Market would be required to meet the same rigorous corporate governance standards applicable to companies on the Nasdaq Capital and Nasdaq Global Markets. These standards require a majority independent board, an independent audit committee, and for independent directors to participate in compensation and nomination decisions. Shareholders are also required to approve significant transactions and the use of equity compensation.

Average monthly trading volume ..... and	> = 1,100,000
Shareholders ..... OR	> = 550
Shareholders	> = 2,200

In addition, a company must have at least 1,250,000 publicly held shares. In computing the number of publicly held shares, Nasdaq would not consider shares held by an officer, director, or 10% shareholder ofthe company.

Publicly Held Shares	> = 1,250,000

Finally, those publicly held shares must have a market value of at least $110 million; provided, however, that if the market value of publicly held shares is at least $100 million and the company has shareholders equity of at least $110 million the company would also qualify.

Market Value of Publicly Held Shares ..... OR	> = $110,000,000
Market Value of Publicly Held Shares ..... and	> = $100,000,000
Shareholders' Equity	> = $110,000,000

2. Financial Tests

A company would also be required to meet one of three financial tests in order to qualify for listing on the Nasdaq Global Select Market. Specifically, companies would be required to demonstrate: (1) Aggregate pre-tax earnings of at least $11 million over the prior three years, with all three years having positive pre-tax earnings and the two most recent years having at least $2.2 million pre-tax earnings each; (2) aggregate cash flows of at least $27.5 million over the prior three years with all three years having positive cash flows, an average market capitalization of at least $550 million over the prior 12 months, and total revenue of at least $110 million in the previous fiscal year; or (3) total revenue of at least $90 million in the previous fiscal year and an average market capitalization of at least $850 million over the prior 12 months. However, the operating history requirements in NASD Rules 4426(c)(1) and (c)(2) may be shortened to a lesser period if an issuer does not have three years of publicly reported financial data.[13]

Three year aggregate pretax earnings; and ..	> = $11,000,000
Pre-tex earings in the two most recent years each; and	> = $2,200,000
Third most recent year pre-tax earnings	> 0
OR	
Three year aggregate cash flows; and	> = $27,500,000
Three most recent years' cash flow each; and ...	> 0
Average 12 month market capitalization; and	> = $550,000,000
Total revenue	> = $110,000,000
OR	
Total revenue; and	> = $90,000,000
Average 12 month market capitalization	> = $850,000,000

Nasdaq would determine compliance with the financial tests based on a company's publicly filed financial information. Thus, for example, as specified in proposed NASD Rule 4427(b), pre-tax earnings would be the company's pre-tax income from continuing operations as filed with the Commission in the issuer's most recent periodic report and/or registration statement.

3. Price Test

Any company newly listed on Nasdaq (both initial public offerings and seasoned companies) would be required to have a minimum $5 bid price to list on the Nasdaq Global Select Market. Companies switching from the Nasdaq Global Market would have previously satisfied the bid price requirement in connection with their initial listing and therefore would not be required to meet this requirement again when transferring to the new segment.

4. Other Provisions

A company listing in connection with a court-approved reorganization under the federal bankruptcy laws or comparable foreign laws would be required to have 450 shareholders for listing, as would a company affiliated with another company listed on the Nasdaq Global Select Market. In these cases, Nasdaq believes that while the shareholder requirement is difficult to meet immediately upon listing because the stock is not initially widely distributed, shares are widely distributed following the initial listing. For similar reasons, the market value of publicly held shares requirement would be $70 million in the case of a company listing in connection with its initial public offering, a company that is affiliated with, or a spin-off from, another company listed on the Nasdaq Global Select Market, and a closed-end management investment company.

Due to their unique nature, closed-end management investment companies would not be required to meet the financial requirements described above.[14] Further, Nasdaq has proposed different liquidity standards for closed-end funds. Finally, if the primary class of a company is included in the Nasdaq Global Select Market, any secondary class of that same company, such as a secondary class of common or a preferred stock, that qualifies for listing on the Nasdaq Global Market shall also be included in the Nasdaq Global Select Market.

5. Continued Listing

Following initial listing on the Nasdaq Global Select Market, securities would be subject to the continued listing standards that are currently applicable to the Nasdaq Global Market. Thus, companies must satisfy one of the alternatives for continued listing contained in NASD Rule 4450.[15]

Implementation

Prior to the planned July 1, 2006, launch of the new segment, Nasdaq would review all companies' qualifications and assign qualified Nasdaq Global Market companies to the new Nasdaq Global Select segment.[16] In addition, qualified Nasdaq Capital Market companies would be given the opportunity to be included in the new segment.[17] Thereafter, beginning in 2007, staff of the Nasdaq Listing Qualifications Department would review all Nasdaq Global Market companies' qualifications each October and qualified Nasdaq Global Market companies would be automatically placed in the new segment the following January.[18] While this review would

[13] A period of less than three months shall not be considered a fiscal year. *See* NASD Rule 4427(f).

[14] While Nasdaq plans to list closed-end funds on the Nasdaq Global Select Market, there are not separate listing standards for structured products, index-linked notes, trust issued receipts, SEEDs, units, commodity-backed products, or Exchange Traded Funds.

[15] For inclusion on the Nasdaq Global Select Market, an initial public offering must be able to satisfy one of the alternatives for continued listing on the Nasdaq Global Market as contained in NASD Rule 4450, as well as the requirements for initial inclusion on the Nasdaq Global Select Market. As a result, the initial listing standards would, in all cases, exceed the criteria set forth in Rule 3a51–1(a)(2) of the Act, 17 CFR 240.3a51–1(a)(2).

[16] As a result of this review, no company then on the Nasdaq Global Market would be adversely affected. Note that the fees for the Nasdaq Global Market and the Nasdaq Global Select Market would be the same. *See* NASD Rule 4510. Fees for securities listed on the Nasdaq Capital Market would continue to differ. *See* NASD Rule 4520. Any company not qualifying for the Nasdaq Global Select Market would remain on the Nasdaq Global Market.

[17] *See* NASD Rule 4425(d).

[18] Nasdaq believes that the delay from October to January is necessary to assure adequate time to complete the required review and notify issuers and market participants about the change. Nonetheless, to assure that no company is disadvantaged by this delay, a company that qualifies for the Nasdaq Global Select Market when it is reviewed in October would be placed in that segment even if it falls below one or more of the initial listing requirements

Continued

occur automatically in October, a company may also apply to upgrade at any point. Companies transferring from the Nasdaq Global Market to the Nasdaq Global Select Market as part of this process would not be assessed entry or application fees. New Nasdaq Global Market listings would also be placed in the Nasdaq Global Select segment if they qualify, although they would be subject to the applicable entry and application fee schedule.

As part of both the initial transfer of companies to the Nasdaq Global Select Market and Nasdaq's ongoing review of companies' eligibility to be included in the Nasdaq Global Select Market, a company that is in a grace or compliance period with respect to a qualitative listing standard, such as the cure period allowed to companies that have a vacancy on their audit committee, would be allowed to transfer to the Nasdaq Global Select Market, subject to the continuation of that grace period. If a company is non-compliant with a qualitative listing requirement [19] that does not provide for a grace period or if staff has raised a public interest concern, the company would not be permitted to transfer to the Nasdaq Global Select Market until the underlying deficiency is resolved. A company that is below a quantitative listing requirement even if the company has not been below the requirement for a sufficient period of time to be considered deficient [20] and a company in a grace or compliance period with respect to a quantitative listing requirement would not be allowed to transfer to the Nasdaq Global Select Market until the underlying deficiency is resolved, nor would any company before a Nasdaq Listing Qualifications Panel.

In connection with the initial transfer of companies to the Nasdaq Global Select Market, Nasdaq proposes to allow (but not require) any Nasdaq-listed company that meets the New York Stock Exchange LLC (''NYSE'') initial listing standards as of July 1, 2006, but that does not then qualify for the new segment, to be included in the Nasdaq Global Select Market, subject to an 18 month grace period until January 1, 2008, to achieve compliance.[21] During that grace period, these companies would have to achieve compliance with all applicable criteria for initial listing on the Nasdaq Global Select Market. Any company that has not achieved compliance with all listing criteria for the Nasdaq Global Select Market by January 2008 would be moved to the Nasdaq Global Market at that time.[22]

2. Statutory Basis

Nasdaq believes that the proposed rule change, as amended, is consistent with the provisions of Section 15A of the Act,[23] in general, and with Section 15A(b)(6) of the Act,[24] in particular. Section 15A(b)(6) of the Act requires that Nasdaq's rule be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market, and to protect investors and the public interest. Nasdaq believes that changing the name of the Nasdaq National Market to the Nasdaq Global Market would more accurately reflect the international reach and leadership of many of the companies listed on that market and the market itself. Further, Nasdaq believes that the creation of a market segment within the Nasdaq Global Market with what it describes as higher initial listing standards would protect investors and the public interest, and would foster competition among exchange markets.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change, as amended, would result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change, as amended, does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, it has become effective pursuant to Section 19(b)(3)(A) of the Act [25] and Rule 19b–4(f)(6) thereunder.[26] At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.[27]

Nasdaq has requested that the Commission waive the 5-day pre-filing notice requirement and the 30-day operative delay and allow the proposed rule change, as amended, to become effective upon filing. The Commission has waived the 5-day pre-filing requirement for this proposal. In addition, the Commission believes that it is consistent with the protection of investors and the public interest to waive the 30-day operative delay.[28] The Commission notes that the proposed rule change, as amended, is substantially similar to a proposed rule change filed by the NASDAQ Stock Market LLC.[29]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act.

Comments may be submitted by any of the following methods:

in January when the actual transfer takes place. However, a company that no longer meets the continued listing requirements for the Nasdaq Global Market in January would not be transferred to the Nasdaq Global Select Market, nor would a company that is delinquent in filing its periodic reports at the time of the transfer or where staff has raised public interest concerns.

[19] Qualitative listing requirements include those requirements contained in NASD Rule 4350.

[20] For example, a security with a closing bid price below $1 is not considered deficient until the security has closed below $1 for 30 consecutive business days. Nonetheless, no security with a closing bid price below $1 would be permitted to list on the Nasdaq Global Select Market, even if it has closed above $1 in the prior 30 business days.

[21] Certain companies would qualify for the NYSE but not the Nasdaq Global Select Market.

[22] If any such company fails to meet the continued listing standards for the Nasdaq Global Market at any point, staff would begin proceedings under the NASD Rule 4800 Series with respect to that company.

[23] 15 U.S.C. 78*o*–3.

[24] 15 U.S.C. 78*o*–3(b)(6).

[25] 15 U.S.C. 78s(b)(3)(A).

[26] 17 CFR 240.19b–4(f)(6).

[27] For purposes of calculating the 60-day period within which the Commission may summarily abrogate the proposed rule change under Section 19(b)(3)(C) of the Act, the Commission considers the period to commence on June 27, 2006, the date Nasdaq filed Amendment No. 4 to the proposed rule change. *See* 15 U.S.C. 78s(b)(3)(C).

[28] For purposes only of waiving the 30-day operative delay of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[29] *See* Securities Exchange Act Release No. 53799 (May 12, 2006), 71 FR 29195 (May 19, 2006) (SR–NASDAQ–2006–007).

Electronic Comments

• Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or

• Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–NASD–2006–068 on the subject line.

Paper Comments

• Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NASD–2006–068. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the NASD.

All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

All submissions should refer to File Number SR–NASD–2006–068 and should be submitted on or before July 31, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[30]

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. 06–6038 Filed 7–7–06; 8:45 am]

BILLING CODE 8010–01–M

[30] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–54084; File No. SR–NASD–2005–087]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Approving Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval to Amendment No. 1 Relating to Amendments to the NASD's Rules Following the Nasdaq Exchange's Operation as a National Securities Exchange for Nasdaq UTP Plan Securities

June 30, 2006

I. Introduction

On July 11, 2005, the National Association of Securities Dealers, Inc. (''NASD'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Exchange Act''),[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend various NASD rules to reflect the Nasdaq Stock Market, Inc.'s (''Nasdaq'') separation from the NASD following the commencement of operations of the Nasdaq Stock Market LLC (''Nasdaq Exchange'') as a national securities exchange.

Prior to 2000, Nasdaq was wholly-owned by the NASD. The NASD currently retains voting control of Nasdaq through an outstanding share of Nasdaq Series D preferred stock.[3] The NASD and Nasdaq began restructuring their relationship in 2000 with the goal of completely separating Nasdaq from the NASD. As part of this restructuring, Nasdaq filed with the Commission an application to register one of its subsidiaries, the Nasdaq Exchange, as a national securities exchange.[4]

The Commission approved the Nasdaq's Exchange's registration as a national securities exchange on January 13, 2006.[5] In the Nasdaq Exchange Order, the Commission conditioned the Nasdaq Exchange's operation as a national securities exchange on the satisfaction of certain enumerated requirements. The Nasdaq Exchange Order and the conditions therein reflected the Nasdaq Exchange's intentions to begin operations as a national securities exchange for CTA Plan Securities as well as securities listed on Nasdaq and reported to the Joint Self-Regulatory Organization Plan Governing the Collection, Consolidation and Dissemination of Quotation and Transaction Information for Nasdaq-Listed Securities Traded on Exchanges on an Unlisted Trading Privileges Basis (''Nasdaq UTP Plan Securities'').

The Commission modified the conditions set forth in the Nasdaq Exchange Order on June 30, 2006, to allow the Nasdaq Exchange to operate as a national securities exchange solely with respect to Nasdaq UTP Plan Securities.[6] During this period, the NASD will continue to control Nasdaq through the Series D preferred share and Nasdaq will continue to perform obligations under the Delegation Plan with respect to CTA Plan Securities. Accordingly, the NASD filed Amendment No. 1 to modify the proposed rule change to reflect the Nasdaq Exchange's operational plan.

II. NASD Proposal

In the proposed rule change, the NASD proposed to: (1) Delete certain NASD rules that pertain to the operation of the Nasdaq Exchange and thus reflect Nasdaq's separation from the NASD; [7] (2) modify certain NASD rules to clarify the NASD's continued regulation of the over-the-counter (''OTC'') market upon the Nasdaq Exchange's operation as an exchange; [8] (3) amend the NASD's Order Audit Trail System (''OATS'') to reflect the use of OATS by Nasdaq Exchange members; [9] (4) make technical and clarifying changes to the rules governing the NASD's Alternative Display Facility

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19B–4.

[3] The share of Series D preferred stock gives the NASD the right to cast one more than one-half of all votes entitled to be cast at an election by all holders of capital stock of Nasdaq. When Nasdaq ceases to operate pursuant to the NASD's Plan of Allocation and Delegation of Functions by NASD to Subsidiaries (the ''Delegation Plan''), the Series D preferred share will expire automatically. *See* Securities Exchange Act Release No. 53022 (December 23, 2005), 70 FR 77433 (December 30, 2005). To reflect this change, the NASD will file a proposed rule change to revise the Delegation Plan to remove references to Nasdaq as a subsidiary of the NASD. Because this change to the Delegation Plan would terminate the NASD's control under the Series D preferred share, the NASD cannot file this proposed rule change until it can represent to the Commission that its control of Nasdaq is no longer necessary because the NASD can fulfill through other means its obligations with respect to securities reported to the Consolidated Transaction Association Plan (''CTA Plan Securities'') *See* Order Modifying Nasdaq Exchange Conditions, *infra* note 6.

[4] In connection with the Nasdaq Exchange registration, Nasdaq became a holding company with the Nasdaq Exchange as its wholly-owned subsidiary.

[5] *See* Securities Exchange Act Release No. 53128, 71 FR 3350 (January 23, 2006) (''Nasdaq Exchange Order'').

[6] *See* Securities Exchange Act Release No. 54085 (June 30, 2006) (''Order Modifying Nasdaq Exchange Conditions'').

[7] *See infra* note 44 and accompanying section.

[8] *See infra* notes 46–53 and accompanying text.

[9] *See infra* note 55 and accompanying text.

(''ADF''); [10] and (5) establish rules governing the NASD's proposed new trade reporting facility (''Trade Reporting Facility'').[11]

The proposed rule change was published for comment in the **Federal Register** on July 22, 2005.[12] The Commission received 14 comment letters from 12 commenters regarding the proposal.[13] On November 23, 2005, and May 3, 2006, the NASD submitted responses to the comment letters.[14]

The NASD filed Amendment No. 1 to the proposal on June 15, 2006. In addition to making several technical corrections and conforming changes,[15] the NASD proposes in Amendment No. 1 to revise its proposal to: (1) Amend the Delegation Plan to retain the delegation to Nasdaq of obligations with respect to CTA Plan Securities, while eliminating Nasdaq's regulatory authority with respect to Nasdaq UTP Plan Securities; [16] (2) amend the Nasdaq Bylaws to reflect changes that were approved in the Nasdaq Exchange Order; [17] (3) retain amended versions of the rules governing Nasdaq's BRUT and INET trading systems; [18] (4) provide that members may continue to quote and trade CTA Plan Securities and participate in the Intermarket Trading System (''ITS'') through an NASD facility by retaining in the NASD's rules revised versions of relevant rules; [19] (5) revise an existing NASD rule to make clear that certain securities that will be listed on the Nasdaq Exchange will continue to be treated as CTA Plan Securities; [20] and (6) delete from NASD Rule 6120 a provision allowing a national securities exchange that trades Nasdaq securities on an unlisted trading privileges basis (''UTP Exchange'') to participate in the Trade Reporting Facility. In addition, the NASD has requested that this proposal become effective only when the Nasdaq Exchange begins operations as a national securities exchange for Nasdaq UTP Plan Securities.

Finally, in Amendment No. 1, the NASD also proposed to renumber NASD Rule 6440(i) as NASD Rule 5110, ''Transactions Related to Initial Public Offerings'' and to extend its application to transactions in Nasdaq UTP Plan Securities.

After careful consideration and for the reasons discussed below, the Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Exchange Act and the rules and regulations thereunder applicable to the NASD, and, in particular, with the requirements of Sections 15A(b)(2), (6), and (11) of the Exchange Act.[21] Section 15A(b)(2) of the Exchange Act requires a registered national securities association to be so organized and have the capacity to be able to carry out the purposes of the Exchange Act. Section 15A(b)(6) of the Exchange Act requires that the rules of a registered national securities association be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to and facilitating transactions in securities, to remove impediments to and protect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest. Section 15A(b)(11) of the Exchange Act requires that the rules of a registered national securities association be designed to produce fair and informative quotations, to prevent fictitious or misleading quotations, and to promote orderly procedures for collecting, distributing, and publishing quotations.

In addition, the Commission is publishing notice to solicit comments on, and is simultaneously approving, on an accelerated basis, Amendment No. 1. Many of the changes proposed in Amendment No. 1 reflect the new implementation strategy for the Nasdaq Exchange and are necessary for the NASD to fulfill its obligations under the Exchange Act with regard to CTA Plan Securities.

Specifically, the NASD proposes to retain its rules that govern its members' quoting, trading, and transaction reporting of CTA Plan Securities and its ITS rules related to the NASD's and its members' compliance with the requirements of the ITS Plan. In this regard, in Amendment No. 1, the NASD proposes to retain the portions of the NASD's Rule 4700 Series relating to the NASD's participation in the ITS Plan. The NASD also proposes to amend the Rule 4700 Series to delete rules that relate to the operation of the Nasdaq Market Center trading system, while retaining the current rules that relate to the operation of the SuperIntermarket functionality, which facilitates NASD members' compliance with the ITS Plan. In addition, the NASD proposes to retain its Rule 6300 Series and Rule 5200 Series, which, among other things, allow NASD members to enter

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[10] *See infra* notes 77–84 and accompanying section.

[11] *See infra* notes 85–101 and accompanying text.

[12] *See* Securities Exchange Act Release No. 52049 (July 15, 2005), 70 FR 42398 (July 22, 2005).

[13] *See* letters to Jonathan G. Katz, Secretary, Commission, from Mary Yeager, Assistant Secretary, New York Stock Exchange, Inc. (''NYSE''), dated August 12, 2005 (''NYSE Letter I'') and November 10, 2005 (''NYSE Letter II''); Edward S. Knight, Executive Vice President and General Counsel, Nasdaq, dated October 13, 2005 (''Nasdaq Letter''); John Boese, Vice President and Chief Regulatory Officer, Boston Stock Exchange, Inc. (''BSE''), dated November 4, 2005 (''BSE Letter''); and Kevin J.P. O'Hara, Chief Administrative Officer and General Counsel, Archipelago Holdings, Inc. (''Archipelago''), dated November 10, 2005 (''Archipelago Letter''); letters to The Honorable Christopher Cox, Chairman, Commission, from Bart J. Ward, Chief Executive Officer, Ward & Company, dated February 10, 2006 (''Ward Letter''); John A. Thain, Chief Executive Officer, NYSE Group, Inc., dated April 27, 2006 (''NYSE Letter III''). *See* also letters to The Honorable Christopher Cox, Chairman, Commission, from The Honorable Geoff Davis, U.S. House of Representatives, dated February 9, 2006 (''Davis Letter''); The Honorable Melissa L. Bean, U.S. House of Representatives, dated January 16, 2006 (''Bean Letter''); The Honorable Edolphus Towns, U.S. House of Representatives, dated January 12, 2006 (''Towns Letter''); The Honorable Michael E. Capuano, U.S. House of Representatives, dated January 3, 2006 (''Capuano Letter''); The Honorable Patrick T. McHenry, U.S. House of Representatives, dated December 22, 2005 (''McHenry Letter''); The Honorable Jim Gerlach, U.S. House of Representatives, dated December 14, 2005 (''Gerlach Letter''); and The Honorable Richard H. Baker, Chairman, Subcommittee on Capital Markets, Insurance and Government Sponsored Enterprises, U.S. House of Representatives, dated December 13, 2005 (''Baker Letter''). The comment letters are available in the Commission's Public Reference Room and on the Commission's Internet Web site (*http://www.sec.gov*). The Commission notes that the Archipelago Letter and NYSE Letter II also were submitted as comment letters in response to the Nasdaq Exchange's application to register as a national securities exchange.

[14] *See* letter to Jonathan G. Katz, Secretary, Commission, from Barbara Z. McSweeney, Senior Vice President and Corporate Secretary, NASD, dated November 23, 2005 (''NASD Response Letter I''); letter to the Honorable Christopher Cox, Chairman, Commission from Robert R. Glauber, Chairman and Chief Executive Officer, NASD, dated May 2, 2006 (''NASD Response Letter II'').

[15] For example, the NASD proposes to: (1) Revise NASD Rule 5100, ''Short Sale Rule,'' to indicate that the NASD's Short Sale Rule will continue to operate as a pilot program; (2) retain the NASD Rule 9700 Series, ''Procedures on Grievances Concerning the Automated Systems'' for appeals of OTC Bulletin Board eligibility determinations and retain NASD Rule 11890, ''Clearly Erroneous Transactions,'' and IM–11890–1 and IM–11890–2; (3) make additional technical changes to the ADF Rules; (4) incorporate NASD rules that have been approved since the NASD filed the proposal; (5) clarify the termination provision in the Trade Reporting Facility LLC agreement to correctly reflect that Nasdaq is not registered as a self-regulatory organization (''SRO''); and (6) retain references to Nasdaq in NASD's Delegation Plan, bylaws and rules to reflect that Nasdaq remains a controlled subsidiary.

[16] *See infra* notes 40–41 and accompanying text.

[17] *See infra* note 42 and accompanying text.

[18] *See infra* notes 72–74 and accompanying text.

[19] *See infra* notes 58–70 and accompanying text.

[20] *See infra* note 57 and accompanying text.

[21] 15 U.S.C. 78o–3(b)(2), (6), and (11). In approving the proposed rule change, the Commission has considered the proposal's impact on efficiency, competition, and capital formation.

quotations in CTA Plan Securities by registering as Consolidated Quote System (''CQS'') market makers and as ITS/Computer Assisted Execution System (''ITS/CAES'') market makers. Finally, the NASD proposes to retain its 6400 Series, which governs the reporting of transactions in CTA Plan Securities that do not occur in the SuperIntermarket. The retention of these rules, with changes that reflect the Nasdaq Exchange's operation as an exchange for Nasdaq UTP Plan Securities, maintains the current framework for OTC trading of CTA Plan Securities. Accordingly, the Commission finds good cause to accelerate approval of these changes.

To reflect the new implementation strategy of the Nasdaq Exchange, in Amendment No. 1, the NASD proposes to retain in the NASD's rules the Nasdaq By-Laws and, rather than remove all references to Nasdaq in the Delegation Plan, to only eliminate Nasdaq's responsibility under the Delegation Plan with respect to Nasdaq UTP Plan Securities. By retaining references to Nasdaq in the Delegation Plan, the NASD retains control over Nasdaq pursuant to the Series D preferred share.[22] The Commission finds good cause to accelerate approval of these changes to the Delegation Plan because they allow Nasdaq to continue to perform the same functions it does today regarding CTA Plan Securities and appropriately limit Nasdaq's delegated authority once it begins operations as a national securities exchange so that it will not be delegated responsibility regarding OTC activities in Nasdaq UTP Plan Securities. Further, these changes ensure that the NASD retains control over Nasdaq so that the NASD will have the means by which to fulfill its obligations through the use of Nasdaq systems with regard to CTA Plan Securities.

In addition, the NASD proposes, in Amendment No. 1, to retain the rules that govern executions of CTA Plan Securities on BRUT and INET. The Commission finds good cause to accelerate approval of these changes because these systems must continue to operate pursuant to NASD rules until the Nasdaq Exchange begins trading CTA Plan Securities.

Finally, the NASD proposes to amend NASD Rule 4400 relating to securities that are dually listed on the NYSE and the Nasdaq Exchange. The revised rule, which reflects language currently found in NASD IM–4400, makes clear that these dually listed securities will continue to be treated as CTA Plan Securities under the NASD's rules and applicable national market system plans. The Commission finds good cause to accelerate approval of this change because it will ensure that these securities are handled in the same manner as they are today.

In Amendment No. 1, the NASD proposes to renumber NASD Rule 6440(i) as NASD Rule 5110 and to extend its application to Nasdaq UTP Plan Securities. This rule prohibits members from executing transactions in securities that are subject to an initial public offering until such security has opened for trading on the listing exchange, which is indicated by the dissemination of an opening transaction by the listing exchange via the Consolidated Tape.[23] The Commission finds good cause to accelerate approval of extending this rule to Nasdaq UTP Plan Securities because it will result in uniform regulation of securities that are subject to an initial public offering.

In Amendment No. 1, the NASD also proposes to retain the NASD Rule 9700 Series, relating to grievances concerning automated systems, and NASD Rule 11890, relating to clearly erroneous transactions. Because the NASD will continue to operate the OTC Bulletin Board (''OTCBB''), it must retain the NASD Rule 9700 Series, which governs the review of requests for OTCBB eligibility determinations. Accordingly, the Commission finds good cause to accelerate approval of NASD's proposal to retain this rule. The Commission notes that the NASD only proposed to eliminate reference to a Nasdaq committee that is currently required in the NASD Rule 9700 Series. The NASD replaced the Nasdaq committee with an NASD committee designated by the Board that must be comprised of at least 50% non-industry committee members. The current Nasdaq committee requires at least five non-industry members on its committee that may consist of between 8 and 18 members. The Commission finds good cause to accelerate approval of this change because it reflects the NASD's responsibility over the OTCBB.

The NASD also proposes to retain amended paragraph (a) of Rule 11890 so that its application will be limited to transactions in CTA Plan Securities. The NASD originally proposed to delete this rule, which provides Nasdaq with authority to review any transaction arising from the use of any execution or communication system owned or operated by Nasdaq. After the Nasdaq Exchange commences operations as an exchange for Nasdaq UTP Plan Securities, the only communication systems of the NASD that will be covered by Rule 11890(a) will be the SuperIntermarket, BRUT, and INET. Accordingly, the Commission finds good cause to accelerate approval of this change that limits Nasdaq's authority under this rule to CTA Plan Securities.

With regard to the Trade Reporting Facility, the NASD proposes in Amendment No. 1 to delete the provision in NASD Rule 6120 that would have allowed a UTP Exchange to participate in the Trade Reporting Facility. This provision is unnecessary because a UTP Exchange would not require a means for reporting internalized trades. Accordingly, the Commission finds good cause to accelerate the deletion of this provision. The NASD also proposes to amend the termination provision of the Trade Reporting Facility LLC agreement to reflect that Nasdaq is not a registered SRO. The Commission finds good cause to accelerate approval of this change because the agreement, as amended, accurately reflects Nasdaq's status.

In Amendment No. 1, the NASD also proposes several technical changes. For example, the NASD proposes to indicate that its Short Sale Rule is a pilot. In addition, the NASD proposes to incorporate rule changes that have been approved or have otherwise become effective since it filed its proposed rule change. The Commission finds good cause to accelerate approval of these changes so that the proposal accurately reflects the NASD's current rules.

Finally, the NASD proposes that its proposed rule change become effective upon the operation of the Nasdaq Exchange as an exchange for Nasdaq UTP Plan Securities. The Commission finds good cause to accelerate approval of this proposal because the NASD must retain its current rules until such time as the Nadsaq Exchange begins operation for Nasdaq UTP Plan Securities in order to continue to fulfill its obligations under the Exchange Act.

For the reasons discussed above, the Commission finds good cause for approving Amendment No. 1 to the proposal prior to the 30th day after the date of publication of notice of filing thereof in the **Federal Register**. Accordingly, the Commission finds that it is consistent with Sections 15A(b)(6)

[22] *See supra* note 3.

[23] The Commission notes that the NASD committed to file a proposed rule change to amend this rule to reflect that transactions in Nasdaq UTP Plan Securities are reported to the Nasdaq UTP Plan. Telephone call between Kelly Riley, Assistant Director, Division of Market Regulation (''Division''), Commission and Lisa Horrigan, Assistant General Counsel, NASD on June 28, 2006.

and 19(b)(2) of the Exchange Act [24] to approve Amendment No. 1 on an accelerated basis.

III. Discussion

A. The NASD's Obligations Under the Exchange Act and Commission Rules

The NASD is a registered national securities association and SRO. One of its statutory obligations as a registered national securities association is to supervise the activities of its members that occur otherwise than on an exchange. In particular, Section 15A(b)(11) of the Exchange Act requires the NASD to have rules that govern the ''form and content of quotations relating to securities sold otherwise than on a national securities exchange. * * *'' [25] These rules also must be designed to produce fair and informative quotations and to promote orderly procedures for collecting, distributing, and publishing quotations.[26] Rule 602 of Regulation NMS also requires the NASD to collect bids, offers, quotation sizes, and aggregate quotation sizes from those members who are responsible broker or dealers.[27] The NASD must then make available to vendors, at all times when last sale information is reported, information about the best bids, best offers, and quotation sizes communicated otherwise than on an exchange by its members that act as OTC market makers, and their identity.

Rule 601 of Regulation NMS [28] requires the NASD to file a transaction reporting plan regarding transactions in listed equity and Nasdaq securities that are executed by its members otherwise than on a national securities exchange.[29] Under Rule 603 of Regulation NMS,[30] national securities exchanges and national securities associations act jointly pursuant to an effective national market system plan to disseminate consolidated information, including a national best bid and offer, and quotations for and transactions in NMS stocks.

The means by which the NASD complies with these requirements today is through operation of its Nasdaq facility [31] and the ADF,[32] and by participating in the Consolidated Quotation System Plan (''CQ Plan'') and CTA Plan for CTA Plan Securities, and the Nasdaq UTP Plan for Nasdaq UTP Plan Securities.

The NASD proposes to continue to operate the ADF for the collection of quotes and transaction reports in Nasdaq UTP Plan Securities.[33] In addition, the NASD's rules will continue to provide for the collection of quotes and transaction reports in CTA Plan Securities.[34] Nasdaq systems, however, are currently the exclusive means by which NASD members enter quotations and report trades in CTA Plan Securities. Under the proposal, as amended, the NASD will continue, via its delegation to Nasdaq, to use Nasdaq systems for collecting quotations and transaction reports in CTA Plan Securities.

Finally, Rule 608 of Regulation NMS requires the NASD to comply with and enforce compliance with the terms of each national market system plan of which it is a sponsor or participant.[35] In addition to the CQ Plan, CTA Plan and Nasdaq UTP Plan, the NASD is a member of the ITS Plan. The ITS Plan contains the rules pursuant to which ITS Participants interact and contains a trade-through rule.[36] Accordingly, most OTC transactions in CTA Plan Securities regulated by the NASD are subject to the requirements of the ITS Plan. The NASD expects to remain a member of the ITS Plan for the purpose of providing access to OTC quotations communicated by its members through NASD facilities and to provide its members with access to exchanges' quotations.

Current NASD rules reflect the NASD's participation in the ITS Plan.[37] In Amendment No. 1, the NASD also proposes to retain the rules that allow its members to enter quotations in CTA Plan Securities by registering as CQS market makers [38] and ITS/CAES market makers.[39] Accordingly, as discussed further below, the Commission finds that these rules, as amended, are consistent with Section 15A(b)(11) of the Exchange Act and the Commission also believes that these changes should enable the NASD to satisfy its obligation under Rule 602 of Regulation NMS.

B. Changes to the NASD's Governing Documents

The proposal, as amended, revises the Delegation Plan to eliminate Nasdaq's responsibility for operating the OTC market for Nasdaq UTP Plan Securities, while continuing to delegate to Nasdaq the responsibility for operating the OTC market for CTA Plan Securities.[40] This change to the Delegation Plan will accurately reflect the scope of the delegation to Nasdaq after the Nasdaq Exchange begins to operate as a national securities exchange for Nasdaq UTP Plan Securities and will ensure that the NASD continues to have the ability to fulfill its obligations with respect to CTA Plan Securities, as described above. Further, eliminating Nasdaq's

[24] 15 U.S.C. 78o–3(b)(6) and 15 U.S.C. 78s(b)(2).

[25] 15 U.S.C. 78o–3(b)(11).

[26] *Id.*

[27] 17 CFR 242.602.

[28] 17 CFR 242.601.

[29] Under Rule 601(b) of Regulation NMS, broker-dealers are prohibited from executing a transaction otherwise than on a national securities exchange unless there is an effective transaction reporting plan. New NASD Rule 5000 requires NASD members to report transactions in exchange-listed securities effected otherwise than on an exchange to the NASD.

[30] 17 CFR 242.603.

[31] Nasdaq systems collect quotations and transaction reports from NASD members, including registered market makers and electronic communication networks (''ECNs''), for both Nasdaq UTP Plan Securities and CTA Plan Securities. The quotations and transaction reports in Nasdaq UTP Plan Securities are reported by Nasdaq systems to the Nasdaq UTP Plan, pursuant to the NASD's participation in the plan for dissemination to vendors. The quotations and transaction reports in CTA Plan Securities are reported by Nasdaq systems to the CQ and CTA Plans, pursuant to the NASD's participation in these plans for dissemination to vendors.

[32] *See* Securities Exchange Act Release No. 46249 (July 24, 2002), 67 FR 49822 (July 31, 2002) (File No. SR–NASD–2002–97) (order approving the ADF on a pilot basis). *See also* Securities Exchange Act Release No. 53699 (April 21, 2006), 71 FR 25271 (April 28, 2006) (notice of filing and immediate effectiveness of File No. SR–NASD–2006–050) (extending the ADF pilot program through January 26, 2007). The ADF was developed to provide NASD members with an alternative to the Nasdaq systems for the reporting of quotations and transaction reports in Nasdaq UTP Plan Securities. These quotations and trade reports are provided to the Nasdaq UTP Plan for dissemination to vendors.

[33] *See* NASD Rule 4000A Series and Rule 5000 Series. As discussed more fully below, transaction reports for Nasdaq UTP Plan Securities also may be submitted to the new Trade Reporting Facility.

[34] *See* NASD Rules 4000 Series, 4700 Series, 5000 Series, 5200 Series, 6300 Series, and 6400 Series.

[35] 17 CFR 242.608(c).

[36] In June 2005, the Commission adopted Regulation NMS, which included the new Rule 611. 17 CFR 242.611. This rule requires a trading center to establish, maintain and enforce written policies and procedures that are reasonably designed to prevent trade-throughs of protected quotations in NMS stocks. Rule 611 became effective on August 29, 2005; compliance with this rule has been extended to a series of five dates beginning on October 16, 2006. *See* Securities Exchange Act Release No. 53829 (May 18, 2006), 71 FR 100 (May 24, 2006).

[37] *See* NASD Rule 5200 Series and 4700 Series.

[38] *See* NASD Rule 6320.

[39] *See* NASD Rule 5220.

[40] Among other things, the Delegation Plan, as amended, delegates to Nasdaq the responsibility for: (1) Operating the OTC market for CTA Plan Securities and the automated systems supporting it; (2) providing and maintaining a telecommunications network infrastructure linking market participants for the efficient processing and handling of quotations, orders, transaction reports, and comparisons of transactions in the OTC market for CTA Plan Securities; (3) developing and adopting rules applicable to the collection, processing, and dissemination of quotation and transaction information for securities traded in the OTC market for CTA Plan Securities; (4) developing and adopting other rules and policies for the OTC market for CTA Plan Securities; and (5) establishing standards for participation in the OTC market for CTA Plan Securities. *See* Delegation Plan, Section III, A.1.

delegation of regulatory authority with regard to Nasdaq UTP Plan Securities satisfies one of the conditions for the Nasdaq Exchange to begin trading Nasdaq UTP Plan Securities.[41]

Because Nasdaq will continue to be controlled by the NASD when the Nasdaq Exchange begins to operate as a national securities exchange for Nasdaq UTP Plan Securities, the proposal retains Nasdaq's By-Laws in the NASD's rules.[42] The Nasdaq By-Laws that the NASD proposes to retain in its rules reflect changes made to the Nasdaq By-Laws as part of the Nasdaq Exchange application and that were approved by the Commission in the Nasdaq Exchange Order.[43] The Commission finds that these changes are consistent with the Exchange Act because they ensure that Nasdaq's By-Laws are accurately reflected in the NASD's rules, while also ensuring that Nasdaq's governing documents reflect its status as a parent company of an SRO.[44]

C. Deleted Rules

The NASD also proposes to delete several rules in their entirety because the NASD will no longer require them after the Nasdaq Exchange commences operation as a national securities exchange for Nasdaq UTP Plan Securities. In this regard, the NASD proposes to delete in their entirety NASD Rules 2870 through 2885, relating to the listing and trading of Nasdaq index options. Similarly, the NASD proposes to delete NASD Rules 2852 and 2854 relating, respectively, to reporting requirements and trading halts or suspensions for index warrants listed on Nasdaq and reported to the Nasdaq UTP Plan.

In addition, the NASD proposes to delete from NASD Rules 2841, 2850, and 2851 provisions relating to index warrants listed on Nasdaq, while retaining provisions in those rules relating to index warrant trading in the OTC market. Similarly, the NASD proposes to delete provisions in NASD Rule 2860 relating to standardized options displayed on Nasdaq, and to retain provisions relating to options trading in the OTC market.

Because the NASD will not list or trade index options or list warrants after the Nasdaq Exchange commences operations as a national securities exchange, the NASD will no longer require these rules. Accordingly, the Commission finds that it is consistent with Section 15A(b)(6) of the Exchange Act for the NASD to delete from its rules provisions governing the listing and trading of index options and warrants listed on Nasdaq.

The NASD also proposes to delete the NASD Rule 6800 Series relating to the Mutual Fund Quotation Service because the Nasdaq Exchange will operate this service. Finally, the NASD proposes to delete the NASD Rule 5100 Series, ''Nasdaq International Service Rules,'' to reflect the expiration of the Nasdaq International Service pilot program.[45]

Because the Nasdaq Exchange, rather than the NASD, will operate the Mutual Fund Quotation Service, the Commission finds that the deletion of the Mutual Fund Quotation Service rules from the NASD's rules is consistent with Section 15A(b)(6) of the Exchange Act. Similarly, the Commission finds that the NASD's deletion of the Nasdaq International Service pilot program rules, which reflects the expiration of the pilot program, is consistent with Section 15A(b)(6) of the Exchange Act.

D. OTC Reporting Facility

The NASD proposes to establish the OTC Reporting Facility. NASD members will use this facility to report trades in PORTAL Securities,[46] OTC Equity Securities,[47] and Direct Participation Program (''DPP'') Securities.[48] Currently, the NASD uses Nasdaq systems to accept these trade reports. According to the NASD, it plans to enter into a contract with Nasdaq so that the NASD may continue to use Nasdaq's Automated Confirmation Transaction Service (''ACT'')[49] as its facility to collect these transaction reports.[50]

1. PORTAL Securities

The current NASD Rule 5300 Series provides qualification and transaction reporting requirements relating to PORTAL Securities, which are foreign and domestic securities that are eligible for resale under Rule 144A under the Securities Act of 1933. The NASD proposes to delete from the NASD Rule 5300 Series rules relating to the qualification requirements for, or designation of, PORTAL Securities, a function that the Nasdaq Exchange will perform.[51] The new NASD Rule 6700 Series will govern transaction reporting in PORTAL Securities and other requirements applicable to the trading of PORTAL Securities.[52] Because these changes will more accurately reflect the NASD's proposed activities with regard to PORTAL Securities after the Nasdaq Exchange begins to operate as an exchange for Nasdaq UTP Plan Securities, the Commission finds them consistent with Section 15A(b)(5) of the Exchange Act.

2. OTC Equity Securities

The NASD proposes to combine its current NASD Rule 6600 and 6700 Series into a single NASD Rule 6600 Series, which will govern reporting requirements for certain quotations and transactions in OTC Equity Securities.[53] The NASD's rules define OTC Equity Securities as any equity security not traded on an exchange and certain exchange-listed securities that do not qualify for real-time trade reporting. Because these changes will maintain the regulatory requirements for trading and reporting transactions in OTC Equity Securities, the Commission believes that they are consistent with Section 15A(b)(6) of the Exchange Act.

3. DPP Securities

The NASD Rule 6900 Series governs the trade reporting of off-exchange secondary market transactions in DPP Securities. The NASD proposes to amend these rules to reflect that such transactions will be reported to the NASD's OTC Reporting Facility rather than the Nasdaq Market Center. The Commission finds these changes consistent with the Exchange Act because the substantive requirements of the NASD Rule 6900 Series will remain unchanged.

[41] *See* Order Modifying Nasdaq Exchange Conditions, *supra*, note 6.

[42] *See* Amendment No. 1.

[43] *See supra,* note 5.

[44] In Amendment No. 1, the NASD also proposes to retain the references to Nasdaq in the By-Laws of NASD Dispute Resolution, NASD Regulation, and the NASD to reflect that Nasdaq will continue to be controlled by the NASD when the Nasdaq Exchange begins to operate as an exchange for Nasdaq UTP Plan Securities.

[45] The Nasdaq International Service pilot program was most recently extended through October 9, 2003. *See* Securities Exchange Act Release No. 46589 (October 2, 2002), 67 FR 63001 (October 9, 2002) (notice of filing and order granting accelerated approval of File No. SR–NASD–2002–130).

[46] *See* NASD Rule 6732.

[47] *See* NASD Rule 6600 Series.

[48] *See* NASD Rule 6900 Series.

[49] In 2004, Nasdaq generally discontinued its use of the term ''ACT'' and replaced it with the term ''Nasdaq Market Center'' or ''service.'' *See* Securities Exchange Act Release No. 50074 (July 23, 2004), 69 FR 45866 (July 30, 2004) (notice of filing and immediate effectiveness of File No. SR–NASD–2004–076). To be consistent with the commenters to this proposal, this order also will use the term ''ACT.''

[50] *See* Amendment No. 1.

[51] *See* Nasdaq Exchange Rule 6500 Series.

[52] Specifically, the new NASD Rule 6700 Series incorporates existing NASD Rules 5330, ''Requirements Applicable to Members of the Association,'' 5331, ''Limitations on Transactions in PORTAL Securities,'' 5332, ''Reporting Debt and Equity Transactions in PORTAL Securities,'' 5340, ''Arbitration,'' and 5350, ''Rules of the Association.''

[53] The NASD also proposes to make minor changes designed to reflect Nasdaq's separation from the NASD and to identify the NASD as the operator of the OTCBB.

E. NASD Rule 9700 Series and 11890 Series

In the original proposal, the NASD proposed to delete in its entirety the NASD Rule 9700 Series, ''Procedures on Grievances Concerning the Automated Systems.'' Because the NASD Rule 9700 Series governs the review of requests for OTCBB eligibility determinations under NASD Rule 6530, ''OTCBB–Eligible Securities,'' the NASD proposes in Amendment No. 1 to retain a revised version of the NASD Rule 9700 Series. The NASD Rule 9700 Series, as amended, replaces references to Nasdaq, the Nasdaq Listing and Review Hearing Council, and systems owned by Nasdaq with references to, respectively, the NASD, a committee designated by the NASD's Board of Governors, and NASD systems. Because these changes to the NASD Rule 9700 Series provide for the continued availability of existing procedures for reviewing OTCBB eligibility determinations, the Commission finds that they are consistent with Section 15A(b)(6) of the Exchange Act.

In addition, Amendment No. 1 revises NASD Rule 9740, ''Consideration of Applications,'' to permit applicants seeking redress pursuant to the NASD Rule 9700 Series to be heard telephonically by a hearing panel, as well as in person. The Commission believes that this change is consistent with Section 15A(b)(6) of the Exchange Act because it will provide additional flexibility for applicants seeking redress under the NASD Rule 9700 Series.

In its original proposal, the NASD proposed to delete NASD Rule 11890, ''Clearly Erroneous Transactions,'' in its entirety. In Amendment No. 1, the NASD proposes to retain a modified version of NASD Rule 11890. NASD Rule 11890(a), ''Authority to review Transactions Pursuant to Complaint of Market Participant,'' currently provides Nasdaq with the authority to review any transaction arising from the use of any execution or communication system owned or operated by Nasdaq. Because Nasdaq will no longer operate an execution or communication system for the NASD for Nasdaq UTP Plan Securities pursuant to the Delegation Plan after the Nasdaq Exchange begins to operate as an exchange for Nasdaq UTP Plan Securities, the NASD is amending NASD Rule 11890(a) to eliminate Nasdaq's authority under the rule to review complaints regarding transactions in Nasdaq UTP Plan Securities. NASD Rule 11890(a) will continue to provide Nasdaq with authority to review complaints regarding transactions in CTA Plan Securities arising from the use of an execution or communication system owned or operated by Nasdaq.[54] For the same reason, NASD Rule 11890(b)(1), as amended, will continue to allow Nasdaq to review, on its own motion, any transaction in a CTA Plan Security in the event of extraordinary market conditions or a disruption or malfunction in the use or operation of any quotation, execution, communication, or trade reporting system owned or operated by Nasdaq, while eliminating this authority with respect to Nasdaq UTP Plan Securities. The Commission finds that these changes are consistent with Section 15A of the Exchange Act because Nasdaq will no longer operate, or be delegated authority with respect to, an NASD execution facility for Nasdaq UTP Plan Securities after the Nasdaq Exchange begins to operate as an exchange for Nasdaq UTP Plan Securities.

In addition, the NASD proposes to amend NASD Rule 11890(b)(2) to allow it to review, on its own motion, any transaction in a Nasdaq UTP Plan Security or an OTC Equity Security in the event of extraordinary market conditions or a disruption or malfunction in the use or operation of any quotation, communication, or trade reporting system owned or operated by the NASD. Thus, NASD Rule 11890(b)(2), as amended, will allow the NASD to declare clearly erroneous transactions in Nasdaq UTP Plan Securities reported to the ADF or to the Trade Reporting Facility. The NASD believes that this authority may be appropriate in very limited circumstances, for example, when an extraordinary event occurs and multiple SROs are canceling or modifying trades.

The Commission finds that NASD Rule 11890(b)(2), as amended, is consistent with Section 15A of the Exchange Act because the expansion of the NASD's authority under NASD Rule 11890(b)(2) replaces authority previously delegated to Nasdaq and should facilitate the fair and efficient resolution of disputes involving clearly erroneous transactions in Nasdaq UTP Plan Securities and OTC Equity Securities.

F. OATS

The NASD proposes to revise its OATS rules regarding orders routed to non-members, including the Nasdaq Exchange, to ensure that the audit trail for transactions executed on the Nasdaq Exchange continues in the same manner as it does today, when transactions are executed on Nasdaq systems that are NASD facilities. Specifically, the NASD proposes that orders routed to non-members, which includes national securities exchanges, be identified with a routed order identifier or other unique identifier required by the non-member receiving the order, and to indicate the national securities exchange or registered securities association to which the order is transmitted.[55] In addition, the NASD proposes to clarify existing requirements by providing that members are permitted to use a routed order identifier that is different from the order identifier used for origination purposes and that a member transmitting an order to another member must provide the routed order identifier to the member receiving the order. The Commission finds that the proposed changes are consistent with Section 15A(b)(2) of the Exchange Act[56] in that they are designed to ensure that the NASD and the Nasdaq Exchange can conduct surveillance and investigations of their members for potential violations of NASD rules, Nasdaq Exchange rules, and the federal securities laws.

G. OTC Trading of CTA Plan Securities

1. Dually Listed Securities

The NASD proposes to eliminate current NASD Rule 4400 and to modify NASD IMZ–Rule 4400, which will become its new Rule 4400. New NASD Rule 4400 describes the treatment of securities that are dually listed on the Nasdaq Exchange and the NYSE. Specifically, the rule indicates that such dually listed securities will continue to be subject to the CQ and CTA Plans and will continue to be treated as CTA Plan Securities under the NASD's rules.[57]The Commission finds that new NASD Rule 4400 is consistent with Section 15A of the Act because it clarifies that the NASD will treat these securities in the same manner as it does today.

2. SuperIntermarket Facility

Through its delegation to Nasdaq under the Delegation Plan, the NASD

[54] As noted above, Nasdaq will continue to operate the SuperIntermarket pursuant to a delegation from the NASD after the Nasdaq Exchange begins to operate as an exchange for Nasdaq UTP Plan securities.

[55] See NASD Rule 6954(c)(6).

[56] 15 U.S.C. 78o–3(b)(2).

[57] Among other things, new NASD Rule 4400 indicates the NASD will continue to send all quotes and transaction reports in dually listed securities to the processor for the CTA Plan while such securities continue to trade through the facilities of the NASD. In addition, the rule notes that market makers in dually listed securities will retain all of the obligations imposed by the NASD Rule 5200, 6300, and 6400 Series regarding quoting, trading, and transaction reporting of CQS securities, and that the NASD will continue to honor the trade halt authority of the primary market under the CQ and CTA Plans.

will continue to use technology owned by Nasdaq, *i.e.*, the SuperIntermarket, as its facility to collect OTC quotes and transaction reports in CTA Plan Securities. In addition, the SuperIntermarket will continue to permit NASD members quoting in the facility to participate in ITS and satisfy the NASD's obligations under the ITS Plan.[58]

a. Quotations

In Amendment No. 1, the NASD proposes to retain its rules that allow its members to register as CQS market makers [59] and ITS/CAES market makers.[60] These rules are essential to the NASD's ability to fulfill its statutory [61] and regulatory obligations,[62]and to NASD members' ability to fulfill their regulatory obligation to submit their OTC quotations to the NASD.[63] The NASD must collect quotations in subject securities that OTC market makers communicate otherwise than on an exchange.[64] NASD rules currently provide that members that communicate quotations off an exchange in CTA Plan Securities must register as CQS market makers and ITS/CAES market makers.[65] The NASD has only proposed minor changes to the rules for CQS market makers and ITS/CAES market makers, including replacing references to the Nasdaq Market Center with references to Nasdaq. The NASD also proposes to adopt NASD Rule 6431, ''Trading Halts,'' to provide a trading halt rule for CTA Plan Securities.[66]

The Commission finds that the NASD's proposal to retain, with minor clarifying changes, its rules governing CQS and ITS/CAES market makers is consistent with Section 15A of the Exchange Act because it will allow the NASD to continue to fulfill its statutory and regulatory obligations,[67] and allow NASD members to continue to fulfill their regulatory obligation to submit their OTC quotations to the NASD.[68] In addition, the Commission finds that the proposal to adopt NASD Rule 6431 is consistent with Section 15A of the Exchange Act because it could help the NASD to maintain a fair and orderly market.

b. Executions

As noted above, the NASD will remain a member of the ITS Plan. As such, the NASD is required to comply with, and enforce compliance by its members with, the provisions of the ITS Plan.[69] Currently, the NASD uses its Nasdaq SuperIntermarket facility to provide its members with access to ITS participant exchanges and to provide ITS participant exchanges with access to ITS/CAES market makers' quotations. The NASD proposes to continue to use the SuperIntermarket system as its facility for these purposes through its delegation to Nasdaq.

In Amendment No. 1, the NASD proposes to retain certain parts of its Rule 4700 Series that relate to the SuperIntermarket, and to eliminate from the 4700 Series those rules that pertain to the trading of Nasdaq UTP Plan Securities on the Nasdaq Market Center. The Commission finds that these changes are consistent with the requirements of the Exchange Act because they will permit the NASD and its members to continue to participate in ITS as they do today.[70] The Commission also finds that the elimination of rules that pertain to the trading of Nasdaq UTP Plan Securities is consistent with the Exchange Act because the NASD will no longer be operating an execution facility for Nasdaq UTP Plan Securities.

c. Transaction Reporting

Members effecting trades in CTA Plan Securities off an exchange, yet outside of the SuperIntermarket facility, will continue, as they do today, to submit trade reports to ACT. Nasdaq will have delegated responsibility under the Delegation Plan to operate ACT for the NASD for this purpose. Accordingly, the NASD proposes to retain its 6400 Series, ''Reporting Transactions in Listed Securities,'' with minor changes, including replacing references to the Nasdaq Market Center with references to Nasdaq.[71]

The Commission finds that these changes are consistent with the Exchange Act. With respect to CTA Plan Securities, the only means currently available to the NASD to fulfill its statutory and regulatory obligations is through NASD facilities owned by Nasdaq. The Commission believes that the NASD Rule 6400 Series, as amended, will enable the NASD to continue to satisfy its obligations under Rules 601 and 603 of Regulation NMS and the CTA Plan to collect its members' transaction reports for OTC trades of CTA Plan Securities.

3. BRUT and INET Rules

Because the Nasdaq Exchange will not commence trading in CTA Plan Securities at this time, any trading of these securities that occurs in BRUT and INET would occur over-the-counter. Accordingly, the NASD has proposed in Amendment No. 1 to retain its current rules that govern the operation of the BRUT [72] and INET [73] systems with regard to CTA Plan Securities. These trading platforms will continue to be facilities of the NASD for CTA Plan Securities that are operated by Nasdaq pursuant to the Delegation Plan. The NASD has proposed to make some changes to these rules to reflect that NASD members may not use these systems to execute OTC trades in Nasdaq UTP Plan Securities.[74] The Commission finds that these changes are consistent with the Exchange Act because they clarify and appropriately limit the use of these systems by NASD members after the Nasdaq Exchange begins to operate an exchange for Nasdaq UTP Plan Securities.

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[58] *See supra* notes 25–39 and accompanying text.

[59] *See* NASD Rule 6300 Series. NASD members that submit quotes in CQS securities must be registered as CQS market makers. *See* NASD Rule 6320(a). CQS market makers must also register as ITS/CAES market makers. *See* NASD Rule 6320(e). *See also* NASD Rule 5210(e).

[60] *See* NASD Rule 5200 Series. NASD members that participate in ITS must register as ITS/CAES market makers. *See* NASD Rule 5220. ITS/CAES market makers must also register as CQS market makers. *See* NASD Rule 5220(a). *See also* NASD Rule 6320(e).

[61] 15 U.S.C. 78o–3(b)(11). *See supra* notes 25–39 and accompanying text.

[62] *See* Rule 602(a) under the Exchange Act, 17 CFR 242.602(a).

[63] *See* Rule 602(b) of Regulation NMS under the Exchange Act, 17 CFR 242.602(b).

[64] *See* Rule 602(b) of Regulation NMS under the Exchange Act, 17 CFR 242.602(b).

[65] *See* NASD Rules 6320(a) and 5210(e). An NASD member that does not communicate quotations off an exchange, but that executes a transaction in a CTA Plan Security off an exchange, may report its transaction to the NASD through ACT, which Nasdaq will operate for the NASD under the Delegation Plan.

[66] NASD Rule 4120 currently contains Nasdaq's authority to halt OTC trading of Nasdaq UTP Plan Securities and CTA Plan Securities. The proposal revises NASD Rule 4120 and renumbers it as NASD Rule 4633, ''Trading Halts,'' which now relates solely to the Trade Reporting Facility. New NASD Rule 6431, which includes the same provisions as NASD Rule 4633, applies to CTA Plan Securities.

[67] *See supra* notes 61 and 62.

[68] *See* note 63, *supra,* and accompanying text.

[69] *See* Rule 608(c) of Regualtions NMS under the Exchange Act, 17 CFR 242.608(c).

[70] *See* Securities Exchange Act Release No. 49349 (March 2, 2004), 69 FR 10775 (March 8, 2004) (order approving the use of SuperMontage for trading ITS securities). The Commission notes that required participation in the ITS Plan is of limited duration. *See supra* note 36.

[71] As described more fully above, the NASD also proposes to adopt NASD Rule 6431, relating to trading halts for CTA Plan Securities.

[72] *See* NASD Rule 4900 Series.

[73] *See* NASD Rule 4950 Series.

[74] Once the Nasdaq Exchange begins operations as a national securities exchange in Nasdaq UTP Plan Securities, transactions in Nasdaq UTP Plan Securities that occur in Brut and INET will be Nasdaq Exchange trades subject to the Nasdaq Exchange's rules and regulatory jurisdiction.

H. OTC Trading of Nasdaq UTP Plan Securities

1. NASD Rule 5110

The NASD proposes to renumber NASD Rule 6440(i) as NASD Rule 5110, ''Transactions Related to Initial Public Offerings,'' which prohibits a member from executing, directly or indirectly, a transaction otherwise than on an exchange in a security subject to an initial public offering until the security has first opened for trading on the national securities exchange listing the security, as indicated by the dissemination, via the Consolidated Tape, of an opening transaction in the security by the listing exchange. In addition, the NASD proposes to extend its application to transactions in Nasdaq UTP Plan Securities. New NASD Rule 5110 is substantially the same as current NASD Rule 6440(i).[75] The Commission finds that new NASD Rule 5110 is consistent with the Exchange Act because it is substantially the same as current NASD Rule 6440(i). In addition, the Commission believes that the application of NASD Rule 5110 to Nasdaq UTP Plan Securities, as well as CTA Plan Securities, after the Nasdaq Exchange begins to operate as a national securities exchange is consistent with the Exchange Act because it will provide consistent treatment for all exchange-traded securities.[76]

2. Changes to the ADF Rules

The ADF is an NASD facility for members to quote and report off-exchange trades in Nasdaq UTP Plan Securities. NASD members that use the ADF must comply with the NASD Rule 4000A Series, ''NASD Alternative Display Facility,'' and the NASD Rule 6000A Series, ''NASD ADF Systems and Programs.''

The NASD proposes to make the following changes to its ADF rules. First, the NASD proposes to clarify that the following ADF rules apply to Registered Reporting ECNs as well as Registered Reporting ADF Market Makers: NASD Rules 4613A(b), relating to firm quote requirements, and 4613A(c), requiring quotations to be reasonably related to the prevailing market; NASD Rule 4617A, relating to normal business hours; NASD Rule 4618A, relating to clearance and settlement requirements; and NASD Rules 4621A and 4622A, relating to the NASD's ability to suspend or terminate quotations or ADF services. The Commission finds that these changes are consistent with Section 15A(b)(6) of the Exchange Act[77] because they will apply ADF rules consistently to Registered Reporting ADF Market Makers and Registered Reporting ECNs.

Second, the NASD proposes to revise NASD Rule 4632A, ''Transactions Reported by Members,'' to incorporate the trade reporting requirements currently set forth in NASD Rule 5430, ''Transaction Reporting,'' which is being deleted. The NASD proposes to delete the NASD Rule 5400 Series, ''Nasdaq Stock Market and Alternative Display Facility Trade Reporting.'' NASD Rule 5410 states that the NASD will operate two facilities for collecting trade reports, the Nasdaq Stock Market and the ADF, and notes that the NASD Rule 5400 Series establishes rules governing which member must report a trade and whether the trade must be reported to the Nasdaq Market Center or to the ADF. The provisions in the NASD Rule 5400 Series relating to the reporting of transactions to the Nasdaq Market Center will be no longer relevant after the Nasdaq Exchange commences operations as a national securities exchange for Nasdaq UTP Plan Securities and, accordingly, the NASD proposes to delete these provisions. Therefore, the Commission finds that elimination of these rules is consistent with the Exchange Act.

The NASD proposes to relocate the provisions in the NASD Rule 5400 Series relating to the ADF to NASD Rules 4630A, ''Reporting Transactions in ADF-Eligible Securities,'' and 4632A, ''Transactions Reported by Members,'' which will govern the reporting of transactions in ADF-eligible securities through the NASD's Trade Reporting and Comparison System (''TRACS''). The Commission believes that the proposal to move the NASD Rule 5400 Series to the ADF rule series should clarify the applicability of the NASD's rules and, therefore the Commission finds that these changes are consistent with Section 15A(b)(6) of the Exchange Act.[78] The Commission believes that this change will help to consolidate the ADF's trade reporting requirements while substantially preserving the current requirements of NASD Rule 5430.

Third, the NASD proposes to make the ADF's trade reporting requirements more consistent with the trade reporting rules that apply to Nasdaq systems. For example, the NASD proposes to require that the execution time in hours, minutes, and seconds based on Eastern Time in military format be included in all ADF trade reports,[79] to add certain trade report modifiers,[80] and to establish provisions relating to the reporting of cancelled trades.[81] The NASD also proposes to clarify that all applicable trade modifiers must be included in ''as/of'' trades.[82] In addition, the NASD proposes to add to NASD Rule 4632A a provision stating that a pattern or practice of late reporting without exceptional circumstances may be considered conduct inconsistent with high standards of commercial honor and just and equitable principles of trade.[83] The Commission finds that these changes, which currently apply to Nasdaq trade reports, are consistent with Section 15A(b)(6) of the Exchange Act in that they are designed to protect investors and the public interest by helping to ensure the timeliness and accuracy of the transaction reports submitted to the ADF.

Fourth, the NASD proposes to revise NASD Rule 4120A to provide that it will halt trading in an ADF-eligible security in the OTC market when there is extraordinary market activity in a security that is likely to have a material effect on the market for the security and the NASD determines, or determines after consultation with a national securities exchange trading the security, that the activity is caused by the misuse or malfunction of an NASD or exchange quotation, communication, reporting, or execution system. The Commission believes that this authority may help the NASD to maintain a fair and orderly market. In addition, the Commission notes that current NASD Rule 4120(a)(6) provides the NASD with comparable trading halt authority.

Finally, the NASD proposes to eliminate the availability of passive market making on the ADF and therefore is deleting ADF rules that relate to passive market making.[84] According to the NASD, passive market making rules for the ADF are unnecessary because only Registered Reporting ECNs participate in the ADF. The NASD notes that if a market maker were, in the future, to quote in the ADF and participate in a secondary offering

[75] NASD Rule 6440(i) prohibits members from executing, directly or indirectly, an OTC transaction in a security subject to an initial public offering until the security has first opened for trading on the national securities exchange listing the security, as indicated by the dissemination, via the Consolidated Tape, of an opening transaction in the security by the listing exchange.

[76] *See supra* note 23.

[77] 15 U.S.C. 78o–3(b)(6).

[78] *Id.*

[79] *See* NASD Rules 4632A(c)(2)(I) and 4632A(d)(2)(D). These changes were proposed in Amendment No. 1.

[80] *See* NASD Rule 4632A(a)(7), (8), and (9).

[81] *See* NASD Rule 4632A(m). This was proposed in Amendment No. 1.

[82] *See* NASD Rule 4632A(a)(10).

[83] *See* NASD Rule 4632A(a)(6).

[84] *See* NASD Rule 4619A.

of a security, the ADF market maker would be required to stop quoting in the ADF in order to comply with Regulation M. The Commission finds that these changes are consistent with the Exchange Act because these rules are not used currently and Rule 103 of Regulation M does not require the NASD to make passive market making available in the ADF.

3. The Trade Reporting Facility

The NASD proposes to establish a new facility, the Trade Reporting Facility, which will provide NASD members with another facility, in addition to the ADF,[85] for reporting transactions in Nasdaq UTP Plan Securities executed otherwise than on an exchange.[86] The Trade Reporting Facility will allow NASD members that currently internalize customer orders through the Nasdaq Stock Market facility of the NASD to continue to internalize such orders pursuant to NASD rules and to report trades to the new Trade Reporting Facility of the NASD.

The Trade Reporting Facility will be operated by the Trade Reporting Facility LLC (''TRF LLC''), which is owned by the NASD and Nasdaq. The TRF LLC proposes to contract with the Nasdaq Exchange to use its technology, *i.e.*, ACT, to accept OTC trade reports from NASD members in Nasdaq UTP Plan Securities. Accordingly, this proposal is intended to maintain the *status quo* with respect to the technology used by NASD members to report OTC transactions in Nasdaq UTP Plan Securities. Further, the NASD proposes to maintain its current rules for accepting transaction reports in Nasdaq UTP Plan Securities. By keeping its current rules, NASD members will be able to continue to choose between two facilities, the Trade Reporting Facility and the ADF, for submitting transaction reports for OTC trades in Nasdaq UTP Plan Securities.[87]

The NASD proposes that its new Rule 4000 Series[88] and Rule 6100 Series,[89] which contain clearing and comparison rules, will govern the reporting of trades to its Trade Reporting Facility. Specifically, the NASD proposes to combine in the new NASD Rule 4630 Series the trade reporting requirements in the current NASD Rule 4630, 4640, and 4650 Series (Nasdaq National Market securities, Nasdaq Capital Market securities, and Nasdaq convertible debt securities, respectively). The Commission believes that the new NASD Rule 4630 Series retains the requirements and general organization of the NASD's current trade reporting rules. In addition, the NASD represents that it intends to interpret and apply the trade reporting rules of the Trade Reporting Facility in the same manner in which it interprets and applies its current trade reporting rules.

The Commission finds that the NASD's rules governing the reporting of trades to the Trade Reporting Facility are consistent with the Exchange Act. The NASD's proposal is designed to allow the NASD and its members to continue to fulfill their obligations under the Commission's rules and the national market system plans with regard to Nasdaq UTP Plan Securities. The Commission also believes that the establishment of the Trade Reporting Facility is consistent with the Congressional finding in Section 11A(a)(1)(C)(iii) of the Exchange Act that it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure the availability of information with respect to transactions in securities.

a. TRF LLC

As noted above, the NASD and Nasdaq will jointly own the TRF LLC, which will operate the Trade Reporting Facility. The NASD has filed the limited liability company agreement (''LLC Agreement'') for the TRF LLC as part of the current proposal.[90] The LLC Agreement makes clear that the NASD will have sole regulatory responsibility for the activities of NASD members related to the facility operated by the TRF LLC. The LLC Agreement identifies the NASD as the ''SRO Member'' of the LLC and provides the NASD with certain rights that are intended to preserve its regulatory authority and control. Specifically, pursuant to the LLC Agreement, the NASD must consent before certain ''Major Actions'' with respect to the TRF LLC are effective. The LLC Agreement defines a ''Major Action'' as: (1) Approving pricing decisions that are subject to the Commission filing process; (2) approving contracts between the TRF LLC and Nasdaq; (3) approving director compensation; (4) selling, licensing, leasing, or otherwise transferring material assets used in the operation of the TRF LLC outside the ordinary course of business with an aggregate value in excess of $3 million; (5) approving or undertaking a merger or other reorganization of the TRF LLC with another entity; (6) entering into any partnership, joint venture, or other similar joint business undertaking; (7) making any fundamental change in the market structure of the TRF LLC; (8) voluntary or involuntary dissolution of the TRF LLC other than termination as provided for in the LLC Agreement;[91] (9) conversion of the TRF LLC to any other type of entity; (10) expanding or modifying the business, which would

[85] As noted above, the ADF currently accepts quotes and transaction reports only for Nasdaq UTP Plan Securities.

[86] *See* NASD Rule 4000 Series. *See also* NASD Rule 5000. New NASD Rule 4000 would permit NASD members to report transactions in Nasdaq UTP Plan Securities executed otherwise than on an exchange to the NASD through the new Trade Reporting Facility. Members also may report transactions in Nasdaq UTP Plan Securities to the ADF. These transaction reports will then be reported to the Nasdaq UTP Plan for dissemination pursuant to the NASD's participation in this Plan. The Commission finds that this proposed change is consistent with Rule 601 under Regulation NMS. *See also* NASD Rule 4100.

[87] The NASD represents that it will have an integrated audit trail and integrated surveillance facilities for members reporting trades on both the ADF and the Trade Reporting Facility. *See* Amendment No. 1. The Commission believes that an integrated audit trail and integrated surveillance capabilities are important to the NASD's ability to conduct effective surveillance of OTC trading in Nasdaq UTP Plan Securities when transactions in those securities can be reported to both the ADF and the Trade Reporting Facility.

[88] The proposal deletes from the current NASD Rule 4000 Series rules that relate to Nasdaq, including listing standards, trading rules for the Nasdaq National Market Center, and Nasdaq market maker registration requirements. The proposal retains an amended version of the NASD Rule 4700 Series, which will govern ITS/CAES members' use of the SuperIntermarket.

[89] The current NASD Rules 6100 Series, which is being deleted, contains rules for the reporting of trades that are executed on the Nasdaq Market Center and ACES. The Commission believes that it is consistent with the Exchange Act to eliminate the NASD Rule 6100 Series because these rules relate solely to the Nasdaq systems that will no longer be NASD facilities after the Nasdaq Exchange begins to trade Nasdaq UTP Plan Securities.

[90] The Commission notes that any changes to the LLC Agreement that are stated policies, practices, or interpretations of the NASD, as defined in Rule 19b–4 under the Exchange Act, must be filed with the Commission pursuant to Section 19(b) of the Exchange Act and Rule 19b–4 thereunder.

[91] As set forth in Section 20 of the LLC Agreement, two years after the effective date of the LLC Agreement, either the NASD or Nasdaq may dissolve the TRF LLC by providing the other with prior written notice of at least one year (unless such notice is revoked). If the NASD provides the notice of dissolution, the NASD and Nasdaq will negotiate in good faith to: (i) Allow Nasdaq to continue to operate the TRF LLC or the business of the TRF LLC under the NASD's SRO registration; (ii) restructure the TRF LLC so that Nasdaq can operate the TRF LLC or its business under its SRO registration or that of any of its affiliates, as the case may be; or (iii) sell the TRF LLC or its business to the NASD based on a valuation of the TRF LLC's business and assets as set forth in the LLC Agreement, and consideration for the sale may include a contract for Nasdaq to provide services to the NASD relating to the operation of the TRF LLC and the business of the TRF LLC.

result in a material change in the business of the TRF LLC; (11) changing the number of directors or composition of the TRF LLC Board; and (12) adopting or amending policies regarding access and credit matters affecting the TRF LLC.[92]

Nasdaq will be primarily responsible for the management of the TRF LLC's business affairs to the extent that those activities are not inconsistent with the regulatory and oversight functions of the NASD. All profits and losses from the TRF LLC will be allocated to Nasdaq.[93]

Although the TRF LLC itself will not carry out any regulatory functions, all of its activities must be conducted in a manner that is consistent with the Exchange Act. In this regard, under Section 9(d) of the LLC Agreement, each member of the TRF LLC agrees to comply with the federal securities laws and rules and regulations thereunder and to cooperate with the Commission pursuant to its regulatory authority and the provisions of the LLC Agreement. Section 10(b) of the LLC Agreement imposes similar obligations on each director of the TRF LLC. Under Section 10(b), each director agrees to comply with the federal securities laws and the rules and regulations thereunder and to cooperate with the Commission and the NASD in carrying out their regulatory authority and the provisions of the LLC Agreement. In addition, Section 10(b) states that each director agrees that in discharging his or her responsibilities as a member of the TRF LLC Board, each director will take into consideration whether his or her actions as a director would cause the TRF LLC or either member to engage in conduct that would be inconsistent with the purposes of the Exchange Act.

The Commission believes that these provisions reinforce the notion that the TRF LLC, as the operator of an NASD facility, is not solely a commercial enterprise; it is an integral part of an SRO registered pursuant to the Exchange Act and, as such, is subject to obligations imposed by the Exchange Act. The Commission underscores that these obligations endure so long as the TRF LLC operates an NASD facility.

The LLC Agreement includes additional provisions that make special accommodations for the NASD as the SRO responsible for the NASD facilities operated by the TRF LLC. For example, Section 10(a) of the LLC Agreement provides that the TRF LLC Board shall, at all times, include at least one director (the ''SRO Member Director'') designated by the NASD. Under Section 10(e) of the LLC Agreement, no ''Major Action,'' as defined in the LLC Agreement, will be effective unless approved by consent of the SRO Member Director.[94] Section 19 of the LLC Agreement prohibits either the NASD or Nasdaq from transferring or assigning its interest in the TRF LLC except to an affiliate, as defined in the LLC Agreement, and the NASD may transfer its interest only to an affiliate that has proper authority to perform the self-regulatory responsibilities of the NASD.

The Commission believes that the provisions described above will allow the NASD to carry out its self-regulatory responsibilities with respect to its facilities operated by the TRF LLC. Moreover, the Commission believes that the limits in Section 19 of the LLC Agreement on transfers of interest in the TRF LLC, together with the requirements of Section 19(b) of the Exchange Act and Rule 19b–4 thereunder, provide the Commission with sufficient authority over changes in control of the TRF LLC to enable the Commission to carry out its regulatory oversight responsibilities with respect to the NASD and its facilities.

The Commission also believes that, as highlighted by the terms of the LLC Agreement, the Commission and the NASD have sufficient regulatory jurisdiction over the controlling parties of the TRF LLC to carry out their responsibilities under the Exchange Act. In Section 17(b) of the LLC Agreement, the NASD and Nasdaq acknowledge that—to the extent directly related to the TRF LLC's activities—their books, records, premises, officers, directors, governors, agents, and employees will be deemed to be the books, records, premises, officers, directors, governors, agents, and employees of the NASD itself and its affiliates for the purposes of, and subject to oversight pursuant to, the Exchange Act. This provision will reinforce the Commission's ability to exercise its authority under Section 19(h)(4) of the Exchange Act[95] with respect to the officers and directors of the TRF LLC because all such officers and directors-to the extent that they are acting in matters related to the TRF LLC's activities-would be deemed to be the officers and directors of the NASD itself. Furthermore, under Section 17(b) of the LLC Agreement, the records of the NASD and Nasdaq, to the extent that they are related to the TRF LLC's activities, are deemed to be records of the NASD itself and are subject to the Commission's examination authority under Section 17(b)(1) of the Exchange Act.[96]

In addition, under Section 17(c) of the LLC Agreement, the NASD and Nasdaq, and each officer, director, agent, and employee thereof, irrevocably submits to the jurisdiction of the U.S. Federal courts, the Commission, and the NASD for the purpose of any suit, action, or proceeding pursuant to the U.S. federal securities laws and the rules and regulations thereunder arising from, or relating to, the TRF LLC's activities. In addition, each Member, and each officer, director, agent, and employee thereof, waives and agrees not to assert by way of motion, as a defense or otherwise, in any suit, action, or proceeding, any claim that it is not personally subject to the jurisdiction of the Commission; that the suit, action, or proceeding is an inconvenient forum; that the venue of the suit, action, or proceeding is improper; or that the subject matter of the suit, action, or proceeding may not be enforced in or by such courts or agency. Moreover, Section 17(e) of the LLC Agreement states that the TRF LLC, the NASD, and Nasdaq will cause their respective affiliates, officers, directors, governors, employees, representatives, and agents to comply with these requirements.

The Commission also believes that, even in the absence of these provisions of the LLC Agreement, under Section 20(a) of the Exchange Act,[97] any person with a controlling interest in the TRF LLC would be jointly and severally liable with and to the same extent that the TRF LLC is liable under any provisions of the Exchange Act, unless the controlling person acted in good faith and did not directly or indirectly induce the act or acts constituting the violation or cause of action. In addition, Section 20(e) of the Exchange Act[98] creates aiding and abetting liability for any person who knowingly provides substantial assistance to another person for violation of any provision of the Exchange Act or rule thereunder. Further, Section 21C of the Exchange Act[99] authorizes the Commission to

[92] *See* Section 10(e) of the LLC Agreement.

[93] *See* Section 15 of the LLC Agreement.

[94] *See supra* text accompanying notes 90–92.

[95] 15 U.S.C. 78s(h)(4). Section 19(h)(4) of the Exchange Act authorizes the Commission, by order, to remove from office or censure any officer or director of an SRO if it finds after notice and an opportunity for hearing that such officer or director has: (1) Willfully violated any provision of the Exchange Act or the rules and regulations thereunder, or the rules of such SRO; (2) willfully abused his or her authority; or (3) without reasonable justification or excuse, has failed to enforce compliance with any such provision by a member or person associated with a member of the SRO.

[96] 15 U.S.C. 78q(b)(1).

[97] 15 U.S.C. 78t(a).

[98] 15 U.S.C. 78t(e).

[99] 15 U.S.C. 78u–3.

enter a cease-and-desist order against any person who has been ''a cause of'' a violation of any provision of the Exchange Act through an act or omission that the person knew or should have known would contribute to the violation.

The Commission believes that, together, these provisions grant the Commission sufficient jurisdictional authority over the controlling parties and Members of the TRF LLC. Moreover, the NASD is required to enforce compliance with the provisions of the LLC Agreement because they are ''rules of the association'' within the meaning of Section 3(a)(27) of the Exchange Act.[100] A failure on the part of the NASD to enforce its rules could result in a suspension or revocation of its registration pursuant to Section 19(h)(1) of the Exchange Act.[101]

4. Comments

The Commission received 13 comment letters from 12 commenters opposing the NASD's proposal to establish the TRF LLC.[102] In light of its interest in the TRF LLC, Nasdaq submitted a comment letter to address the issues raised by the NYSE.[103] In addition, because the Archipelago Letter and the NYSE Letter II also were submitted in response to the Nasdaq Exchange's application to register as a national securities exchange, Nasdaq also addressed the comments raised in those letters in its response to comments concerning its exchange application.[104] The NASD also responded to the issues raised by the commenters.[105] The principal issues raised by commenters are discussed below.

a. Trade Reporting Facility is a Facility of the NASD

Because of the affiliation between the Nasdaq Exchange and the TRF LLC, several commenters argue that the Trade Reporting Facility would not truly be a facility of the NASD, but instead would be a facility of the Nasdaq Exchange.[106] These commenters argue that the Trade Reporting Facility is a facility of the Nasdaq Exchange because the Nasdaq Exchange's parent company controls the board of the TRF LLC, directs all business decisions, provides technology, and will reap the economic benefits of the TRF LLC. Based on the premise that the Trade Reporting Facility is a facility of the Nasdaq Exchange, these commenters believe that approval of the Trade Reporting Facility would be inconsistent with what they view as the Commission's policy that an exchange must provide an opportunity for all exchange orders to interact with each other.[107]

Several commenters also argue that the Trade Reporting Facility, as a facility of the Nasdaq Exchange, would allow an exchange to take credit and receive remuneration for trades that do not occur on that exchange, which these commenters maintain is inconsistent with current law.[108] One commenter said that allowing Nasdaq to take credit for off-exchange trades would reduce transparency and lead to a mistaken sense of an exchange's liquidity and depth of market.[109]

Commenters also argue that approval of the Trade Reporting Facility as operated by the TRF LLC will result in the proliferation of print facilities because other markets will seek to establish similar arrangements.[110] One commenter argued that this would result in less order interaction.[111] Several commenters also argue that providing revenue and trade information to markets that have no nexus with the actual trades may contravene the public interest.

Section 3(a)(2) of the Exchange Act[112] defines the term ''facility'' of an exchange to include ''its premises, tangible or intangible property whether on the premises or not, any right to the use to such premises or property or any service thereof for the purpose of effecting or reporting a transaction on an exchange (including, among other things, any system of communication to or from the exchange, by ticker or otherwise, maintained by or with the consent of the exchange), and any right of the exchange to the use of any property or service.'' While the Trade Reporting Facility plainly is an affiliate of Nasdaq, the Commission does not believe that the Trade Reporting Facility is a facility of the Nasdaq Exchange within the terms of the Exchange Act. Nasdaq owns the system that the TRF uses for reporting trades; however, the Trade Reporting Facility is not a service ''for the purpose of effecting or reporting a transaction'' on the Nasdaq Exchange. Instead, the Trade Reporting Facility is a service for the purpose of reporting transactions to the NASD. Therefore, the Commission believes that the Trade Reporting Facility is a facility of the NASD and not a facility of the Nasdaq Exchange.[113]

NASD members would report trades to the Trade Reporting Facility pursuant to NASD rules. In addition, transactions reported to the Trade Reporting Facility will be disseminated with a modifier indicating that they are NASD trades, which will clearly distinguish them from transactions executed on or through the Nasdaq Exchange. Because the Trade Reporting Facility is an NASD facility, the NASD will have the responsibility under the Exchange Act to regulate its members' activities related to the Trade Reporting Facility.[114] The Commission believes that the LLC Agreement provides the NASD with sufficient authority to carry out its SRO responsibilities because the LLC Agreement provides, among other things, that the NASD will have sole regulatory responsibility for the activities of the TRF LLC, including the right to review and approve the regulatory budget, approve rule proposals relating to the activities of the TRF LLC prior to their filing with the

[100] 15 U.S.C. 78c(a)(27).

[101] 15 U.S.C. 78s(h)(1).

[102] *See* Archipelago Letter, BSE Letter, NYSE Letters I, II and III, Ward Letter, Davis Letter, Bean Letter, Towns Letter, Capuano Letter, McHenry Letter, Gerlach Letter, and Baker Letter, *supra* note 13.

[103] *See* Nasdaq Letter, *supra* note 13.

[104] *See* letter from Edward Knight, Executive Vice President and General Counsel, Nasdaq, to Jonathan G. Katz, Secretary, Commission, dated December 13, 2005 (''Nasdaq Letter II'').

[105] *See* NASD Response Letters I and II, *supra* note 14.

[106] *See* Archipelago Letter, *supra* note 13. *See also* NYSE Letter I, BSE Letter, Bean Letter, Towns Letter, Gerlach Letter, *supra* note 13.

[107] *See* Bean Letter, Archipelago Letter, NYSE Letter I, BSE Letter, and Towns Letter, *supra* note 13. *See also* Ward Letter, *supra* note 13.

[108] *See* Davis Letter, Bean Letter, Archipelago Letter, NYSE Letter I, BSE Letter, Towns Letter, McHenry Letter, Baker Letter, Gerlach Letter, *supra* note 13.

[109] *See* Ward Letter, *supra* note 13.

[110] *See* Ward Letter, Bean Letter, Towns Letter, Capuano Letter, Gerlach Letter, Baker Letter, Archipelago Letter, BSE Letter, *supra* note 13.

[111] *See* Archipelago Letter, *supra* note 13.

[112] 15 U.S.C. 78c(a)(2).

[113] The Commission has previously approved arrangements similar to the Trade Reporting Facility in which a third party technology provider operates an SRO's facility in return for payment of related revenues. For example, the Pacific Exchange's equity trading facility was for several years operated by an unaffiliated third party—ArcaEx. *See* Securities Exchange Act Release No. 44983 (October 25, 2001), 66 FR 55225 (November 1, 2001) (order approving the Archipelago Exchange as the equities trading facility of PCX Equities, Inc., a subsidiary of the Pacific Exchange, Inc.) (''ArcaEx Order''). Under the Agreement, PCX paid the parent of ArcaEx market data revenue and transaction and listing fees. *See* Archipelago Holdings, Inc. Annual Report on Form 10-K for fiscal year ended December 31, 2004. In September 2005, the parent of ArcaEx—Archipelago—acquired the Pacific Exchange. Accordingly, the exchange and the facilities operator became affiliated. *See* Securities Exchange Act Release No. 52497 (September 22, 2005), 70 FR 56949 (September 29, 2005). Recently, the NYSE and Archipelago merged, and the Pacific Exchange was renamed NYSE Arca.

[114] Similar arrangements that have been approved by the Commission provided for the same obligations with respect to such facilities. *See* Securities Exchange Act Release Nos. 49067 (January 13, 2004), 69 FR 2761 (January 20, 2004) (order approving the Boston Options Exchange as a facility of the Boston Stock Exchange, Inc.); and Arca Ex Order, *supra* note 113.

Commission, adopt and interpret policies regarding NASD facilities, and perform real time market surveillance. In addition, under the LLC Agreement no ''Major Action,'' as defined in the LLC Agreement, may become effective without the NASD's consent.[115]

To the extent that approval of the Trade Reporting Facility results in other markets seeking to establish similar arrangements with the NASD, the Commission notes that the NASD would have to file any proposed rule change generated by such proposals pursuant to Section 19 of the Exchange Act, and the Commission would be required to determine that such proposed rule change complied with the requirements of the Exchange Act. The Commission notes, however, that the Exchange Act does not prohibit the NASD from establishing different facilities for purposes of fulfilling its regulatory obligations. Indeed, the Commission notes that the NASD currently operates two facilities for the reporting of OTC trades in Nasdaq-listed securities—the ADF and the Nasdaq Market Center.

b. Impact on Internalization Practices

Based on the premise that the Trade Reporting Facility is a facility of the Nasdaq Exchange, commenters conclude that the Trade Reporting Facility would allow Nasdaq Exchange members to execute and report trades without regard to orders resident on the Nasdaq Exchange book and thereby increase the internalization of orders.[116] One commenter objects to NASD members' current ability to execute trades in the OTC market without interacting with other better-priced orders on exchanges.[117] Another Commenter suggests that NASD members would not be required to provide the best prices in the market.[118] Commenters also contend that approval of the NASD's Trade Reporting Facility would result in a different standard for the Nasdaq Exchange as compared to other exchanges because, unlike other exchanges, the Nasdaq Exchange would not be required to have a consolidated limit order book.[119]

As discussed above, the Commission does not believe that the Trade Reporting Facility is a facility of the Nasdaq Exchange. Moreover, the Commission does not believe that the Trade Reporting Facility will increase the internalization of orders. The Trade Reporting Facility simply preserves the ability of an NASD member, who may also be a member of the Nasdaq Exchange or another exchange, to report trades executed otherwise than on an exchange to the NASD through the Trade Reporting Facility without regard to the orders on the Nasdaq Exchange or any other exchange's consolidated limit order book. The Commission notes that the ability to report internalized trades to an NASD facility exists and is widely used today. In this regard, an NASD member today may report internalized trades to the Nasdaq facilities of the NASD without regard to the priority rules of the Nasdaq's SuperMontage system or any exchange of which it is a member. There is no reason to expect the Trade Reporting Facility to increase such practices.

Finally, the Commission notes that a broker-dealer has a legal duty to seek to obtain the best execution of customer orders.[120] This duty requires broker-dealers to execute customers' trades at the most favorable terms reasonably available under the circumstances.[121] Further, the NASD noted that its members are subject to, among other things, NASD Rule 2320, which would prohibit an NASD member from disregarding the market.[122] Accordingly, the Commission does not agree with the commenters that argued that the Trade Reporting Facility would permit NASD members to ignore disseminated quotes and their best execution obligations.[123]

c. Unfair Competition

Several commenters object to the NASD's payment to Nasdaq of the market data revenue generated by trades reported to the Trade Reporting Facility operated by the TRF LLC.[124] One commenter argues that the transfer of market data revenue from the NASD to Nasdaq through the TRF LLC is inconsistent with Section 11A of the Exchange Act and Regulation NMS.[125] Others state that payment of market revenue would amount to a subsidy of the Nasdaq Exchange by the NASD, which would provide the Nasdaq Exchange with an unfair economic advantage over other national securities exchanges.[126] One commenter also maintains that the Nasdaq Exchange would be able to use revenue generated by off-exchange trades to defray its business and exchange surveillance expenses, thereby discriminating against other exchanges.[127]

One commenter raises competitive issues regarding the technology that will be used by the Trade Reporting Facility to collect trade reports.[128] Specifically, the commenter argues that Nasdaq's ACT is an industry utility because virtually all market participants use the system for reporting OTC trades. This commenter argues that Nasdaq's competitors should have equal access to ACT and the Trade Reporting Facility to eliminate the unfair competitive advantage the commenter believes exists due to Nasdaq's monopoly on ACT.

Section 15A(b)(9) of the Exchange Act[129] prohibits the NASD from having rules that impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Exchange Act. The Commission finds that the proposal does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Exchange Act. As the NASD and Nasdaq note, the LLC Agreement does not preclude the NASD from entering into similar arrangements with other national securities exchanges.[130] For this reason, the Commission believes that the Trade Reporting Facility does not impose any unfair burden on competition, as required by the Exchange Act.

The NASD notes that an exchange may develop its own proprietary system for reporting trades, and the NASD

[115] *See supra* text accompanying note 92 for the LLC Agreement's definition of ''Major Action.''

[116] *See* Archipelago Letter, BSE Letter, NYSE Letter I, *supra* note 13.

[117] *See* BSE Letter, *supra* note 13.

[118] *See* Capuano Letter, *supra* note 13.

[119] *See* Archipelago Letter, BSE Letter, NYSE Letter I, *supra* note 13.

[120] *See, e.g., Newton* v. *Merrill, Lynch, Pierce, Fenner & Smith, Inc.,* 135 F.3d 266, 269–70 (3d Cir.), *cert denied,* 525 U.S. 811 (1998); *Certain Market Making Activities on Nasdaq,* Securities Exchange Act Release No. 40900 (Jan. 11, 1999) (settled case) (citing *Sinclair* v. *SEC,* 444 F.2d 399 (2d Cir. 1971)); *Arleen Hughes,* 27 SEC 629, 636 (1948), *aff'd sub nom. Hughes* v. *SEC,* 174 F.2d 969 (D.C. Cir. 1949). *See also* Order Execution Obligations, Securities Exchange Act Release No. 37619A (Sept. 6, 1996), 61 FR 48290 (Sept. 12, 1996) and NASD Rule 2320, ''Best Execution and Interpositioning.''

[121] *Newton,* 135 F.3d at 270. *Newton* also noted certain factors relevant to best execution—price order size, trading characteristics of the security, speed of execution, clearing costs, and the cost and difficulty of executing an order in a particular market. *Id.* at 270 n. 2 (citing Payment for Order Flow, Securities Exchange Act Release No. 33026 (Oct. 6, 1993), 58 FR 52934, 52937–38 (Oct. 13, 1993) (Proposed Rules)). *See In re E.F. Hutton & Co.* (''Manning''), Securities Exchange Act Release No. 25887 (July 6, 1988). *See also* Securities Exchange Act Release No. 34902 (Oct. 27, 1994), 59 FR 55006 at 55008–55009 (Nov. 6, 1994) (Payment for Order Flow Final Rules).

[122] *See* Amendment No. 1.

[123] *See* BSE Letter, *supra* note 13. *See also* Capuano Letter, *supra* note 13.

[124] *See* NYSE Letters I, II, and III, *supra* note 13. *See also* Gerlach Letter, Ward Letter, *supra* note 13.

[125] *See* NYSE Letters I, *supra* note 13.

[126] *See* NYSE Letters I and II, Ward Letter, and Gerlach Letter, *supra* note 13.

[127] *See* NYSE Letters I and II, *supra* note 13.

[128] *See* NYSE Letter III, *supra* note 13.

[129] 15 U.S.C. 78o–3(b)(9).

[130] *See* NASD Response Letters I and II, *supra* note 14 and Nasdaq Letter, *supra* note 13. *See also* Amendment No. 1.

represents that it is prepared to implement a trade reporting facility with any exchange based on the technology available to the exchange.[131] The NASD represents that it has, in fact, discussed trade reporting facility arrangements with a number of exchanges.[132] Because another exchange may develop a proprietary trade reporting system and enter into a similar trade reporting facility arrangement with the NASD, the Commission does not believe that the unavailability of ACT to other exchanges imposes a burden on competition that is not necessary or appropriate in furtherance of the purposes of the Exchange Act.

The Commission notes that the NASD bears the responsibility for overseeing the entities that report trades to the Trade Reporting Facility and for providing regulatory services to the Trade Reporting Facility. The TRF LLC will pay the NASD for these services using revenues generated by the Trade Reporting Facility. Under the LLC Agreement, Nasdaq must ensure that the TRF LLC has funds sufficient to satisfy its regulatory obligations and must guarantee the TRF LLC's payment of obligations relating to the costs associated with the NASD's performance of regulatory services for the Trade Reporting Facility.[133] As the NASD states in its response to the commenters, Nasdaq bears the economic risks associated with the operation of the Trade Reporting Facility, including any losses if revenues fail to cover regulatory and other costs associated with operating the Trade Reporting Facility.[134] In light of the costs, and potential losses, that Nasdaq must bear in connection with the operation of the Trade Reporting Facility, the Commission does not believe that allocating revenues generated by the Trade Reporting Facility to Nasdaq, net of costs, would provide the Nasdaq Exchange with an unfair economic advantage over other national securities exchanges or impose a burden on competition that is not necessary or appropriate in furtherance of the purposes of the Exchange Act. Moreover, the Commission does not believe that an agreement by the NASD under which it pays Nasdaq market data revenue in exchange for Nasdaq providing the technology and bearing other costs of operating the facility is inconsistent with Regulation NMS or the Exchange Act and the rules and regulations thereunder.

Finally, the Commission disagrees with the characterization of Nasdaq's ACT system as an industry utility. ACT is an automated system owned and operated by Nasdaq that, among other things, provides for the reporting of transactions in securities. The Exchange Act, however, does not prevent any other party, including an exchange, from developing similar technology for use as an NASD facility. Further, the Commission does not believe that the inability of competitors to use ACT for purposes of receiving compensation for trades reported by their members constitutes a denial of access under Section 19(d) of the Exchange Act. Under the proposal, all market participants that are members of the NASD will continue to have the ability to report internalized trades through ACT. Thus, the proposal does not prohibit or limit any person with respect to access to services offered by the NASD in violation of Section 19(d) of the Exchange Act. The Commission does not believe that Section 19(d) or any other provision of the Exchange Act requires Nasdaq to make its proprietary trade reporting system available to a competing exchange.

d. Impact on the NASD's Ability to Effectively Regulate

One commenter also questions whether the payment of market data revenue to Nasdaq would adversely impact the NASD's ability to regulate the Trade Reporting Facility or provide NASD members with reduced membership fees, or would impair the NASD's regulatory independence.[135] In particular, the commenter claims that it would compromise the NASD's regulatory integrity and neutrality as the SRO for the OTC market and would perpetuate the conflicts that the separation of the Nasdaq Exchange from the NASD was designed to ameliorate. Nasdaq asserts that it would receive the revenues associated with the TRF LLC ''because it would provide the connectivity and reporting technology and bear all costs associated with the facility.'' [136] In addition, the LLC Agreement requires Nasdaq to ensure that the TRF LLC has funds sufficient to satisfy its regulatory obligations and to guarantee the TRF LLC's payment obligations relating to costs associated with the NASD's performance of its SRO responsibilities related to the activities of the TRF LLC.[137] This obligation is independent of the revenue associated with the TRF LLC. Therefore, the Commission does not believe that the LLC Agreement or the TRF LLC would impair the NASD's ability to carry out its obligations under Section 15A of the Exchange Act.[138]

e. Compliance With CTA Plan and the Nasdaq UTP Plan

One commenter contends that the payment of market data revenue to the Nasdaq Exchange by the NASD would violate both the CTA and Nasdaq UTP Plans.[139] This commenter refers to its earlier comment letters regarding Nasdaq's application for exchange registration, in which the commenter opposed Nasdaq's proposed transaction reporting rules.[140] The proposed rules would have allowed the Nasdaq Exchange to report—and receive revenue for—internalized and other off-exchange trades. This commenter argued that the proposed transaction reporting rules would not comply with Section VIII(a) of the CTA Plan, which requires each participant exchange to report all trades occurring on its floor and requires the NASD to report all trades that do not take place on the floor of an exchange.[141] Similarly, the commenter maintained that the proposed rules would violate Section VIII(B) of the Nasdaq UTP Plan.[142] By not complying with the terms of these plans, the commenter concludes that both Nasdaq and the NASD would

[131] *See* NASD Response Letter II, *supra* note 14.

[132] *See* NASD Response Letter II, *supra* note 13.

[133] *See* LLC Agreement, Section 12.

[134] *See* NASD Response Letter I, *supra* note 14. *See also* LLC Agreement, Section 15 (allocating the profits and losses of the Trade Reporting Facility to Nasdaq).

[135] *See* NYSE Letter I, *supra* note 13.

[136] *See* Nasdaq Letter II, *supra* note 13.

[137] 137 *See* LLC Agreement Section 12.

[138] 15 U.S.C. 78o–3.

[139] *See* NYSE Letter I and attached letters, *supra* note 13.

[140] *See* letters from Darla C. Stuckey, Corporate Secretary, NYSE, to Jonathan G. Katz, Secretary, Commission, dated February 15, 2002 (''NYSE February 2002 Letter''); and James E. Buck, Senior Vice President and Secretary, NYSE, to Jonathan G. Katz, Secretary, Commission, dated August 27, 2001.

[141] Specifically, Section VIII(a) of the CTA Plan states that the exchange participants will each collect and report to the Processor all last sale price information to be reported by it relating to transactions in Eligible Securities taking place on its floor. Section VIII(a) states, further, that the NASD shall collect from its members all last sale price information to be included in the consolidated tape relating to transactions in Eligible Securities not taking place on the floor of an exchange and shall report all such last sale price information to the Processor in accordance with the provisions of Section VIII(b) of the CTA Plan.

[142] *See* NYSE February 2002 Letter, *supra* note 140. Section VIII(B) of the Nasdaq UTP Plan states that each Participant shall be responsible to promptly collect and transmit to the Processor Transaction Reports in Eligible Securities executed in its Market. Section III(E) of the Nasdaq UTP Plan defines ''Market,'' when used in connection with Transaction Reports, to mean the Plan Participant through whose facilities the transaction took place or was reported, or the Plan Participant to whose facilities the order was sent for execution.

violate Rule 608 of Regulation NMS,[143] which requires each SRO to comply with the terms of an effective national market system plan in which it participates and to enforce compliance with such plan by its members and persons associated with its members.[144]

As noted in the Nasdaq Exchange Order, Nasdaq amended its exchange application so that only trades executed through the systems of the Nasdaq Exchange will be reported to the Nasdaq Exchange. [145] Through its Trade Reporting Facility and related rules, the NASD, rather than Nasdaq, will report all off-exchange trades and collect transaction reports for trades reported through the Trade Reporting Facility, as required by the Nasdaq UTP Plan. Accordingly, the Commission believes that the LLC Agreement and the proposed rules of the Trade Reporting Facility are consistent with the terms of the Nasdaq UTP Plan.[146]

f. Consistency With Market Data Revenue Allocation Formula

One commenter states that the TRF LLC proposal is inconsistent with the objectives of the market data revenue allocation rules adopted by the Commission in conjunction with Regulation NMS. [147] According to this commenter, the new market data revenue allocation rules were intended to decrease incentives to engage in sham trades, wash sales, and tape shredding.

In addition to modifying Exchange Act rules governing the display and distribution of market data, the Commission amended the CTA Plan, the CQ Plan, and the Nasdaq UTP Plan (each a ''Plan'' and, collectively, the ''Plans'') to incorporate a new net income allocation formula into each Plan.[148] The amendments to each of the Plans incorporated a broad-based measure of the contribution of an SRO's quotes and trades to the consolidated data stream.

The Commission does not believe that the TRF LLC is inconsistent with the objectives of the new Plan formulas, which included reducing the incentives for distortive behavior, such as sham trades, wash sales, and tape shredding. The TRF LLC does not alter the new Plan formulas. Further, the NASD's proposed Trade Reporting Facility rules do not appear to create any incentives for distortive behavior.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning Amendment No. 1, including whether Amendment No. 1 is consistent with the Exchange Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File No. SR–NASD–2005–087 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File No. SR–NASD–2005–087. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the NASD. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make publicly available. All submissions should refer to File No. SR–NASD–2005–087 and should be submitted on or before July 31, 2006.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Exchange Act,[149] that the proposed rule change (SR–NASD–2005–087), as amended, is approved.

By the Commission.

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. 06–6083 Filed 7–7–06; 8:45 am]

BILLING CODE 8010–01–P

[143] Rule 608 of Regulation NMS was formerly Exchange Act Rule 11Aa3–1.

[144] *See* Rule 608(c) of Regulation NMS, 17 CFR 242.608(c).

[145] *See* Nasdaq Exchange Order, supra note 5.

[146] The Commission notes that the Trade Reporting Facility will not accept trade reports for CTA Plan Securities and, thus, the NASD will not report such trades to the CTA Plan through the Trade Reporting Facility. Accordingly, the Trade Reporting Facility and the TRF LLC will not receive CTA Plan revenue.

[147] *See* NYSE Letter II, *supra* note 13.

[148] *See* Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496 (June 29, 2005)(adopting Regulation NMS).

[149] 15 U.S.C. 78s(b)(2).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–54089; File No. SR–NASD–2006–077]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Eliminate Its Current General Revenue Sharing Program Under NASD Rule 7010(u) and To Adopt a Revenue Sharing Program Limited to Transactions in Nasdaq-Listed Securities Reported to the Trade Reporting Service of the Nasdaq Market Center

June 30, 2006.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 22, 2006, the National Association of Securities Dealers, Inc. (''NASD''), through its subsidiary, The Nasdaq Stock Market, Inc. (''Nasdaq''), filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by Nasdaq. Nasdaq has filed the proposal as a ''non-controversial'' proposed rule change pursuant to Section 19(b)(3)(A) of the Act,[3] and Rule 19b–4(f)(6) thereunder,[4] which renders the proposal effective upon filing with the Commission.[5] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6).

[5] Nasdaq gave the Commission written notice of its intent to file the proposed rule change on May 31, 2006 and has asked the Commission to waive the 30-day operative delay. *See* Rule 19b–4(f)(6)(iii). 17 CFR 240.19b–4(f)(6)(iii).

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Nasdaq proposes to eliminate its current general revenue sharing plan under NASD Rule 7010(u) and to adopt a revenue sharing program limited to transactions in Nasdaq-listed securities reported to the Trade Reporting Service of the Nasdaq Market Center. Nasdaq will implement the proposed rule change on July 1, 2006.

The text of the proposed rule change is below. Proposed new language [6] is in *italics*; proposed deletions are in [brackets].

7010. System Services

(a)–(f) No change.

(g) Nasdaq Market Center Trade Reporting

(1) No change to text.

(2) Nasdaq Market Center Trade Reporting Revenue Sharing Program

After Nasdaq earns total operating revenue sufficient to offset actual expenses and working capital needs, a percentage of Reporting Participant Operating Revenue (''RPOR'') associated with transactions in Nasdaq-listed securities reported to the Trade Reporting Service of the Nasdaq Market Center shall be eligible for sharing with Nasdaq Market Makers and Nasdaq ECNs (as defined in the Rule 4700 Series). RPOR is defined as operating revenue that is generated by Nasdaq Market Makers and Nasdaq ECNs and consists of transaction fees and market data revenue that is attributable to Nasdaq Market Makers' and Nasdaq ECNs' transactions in Nasdaq-listed securities reported to the Trade Reporting Service of the Nasdaq Market Center. RPOR shall not include any investment income or regulatory monies. The sharing of RPOR shall be based on each Nasdaq Market Maker's and Nasdaq ECN's pro rata contribution to RPOR. In no event shall the amount of revenue shared with Nasdaq Market Makers and Nasdaq ECNs under Rule 7010(g)(2) exceed RPOR. To the extent market data revenue is subject to year-end adjustment, RPOR revenue may be adjusted accordingly. Credits will be provided on a quarterly basis.

(h)–(t) No change.

(u) [Nasdaq Revenue Sharing Program] *Reserved*

[After Nasdaq earns total operating revenue sufficient to offset actual expenses and working capital needs, a percentage of all Market Participant Operating Revenue (''MPOR'') shall be eligible for sharing with Nasdaq Quoting Market Participants (as defined in Rule 4701). MPOR is defined as operating revenue that is generated by Nasdaq Quoting Market Participants. MPOR consists of transaction fees, technology fees, and market data revenue that is attributable to Nasdaq Quoting Market Participant activity in Nasdaq National Market and Capital Market securities. MPOR shall not include any investment income or regulatory monies. The sharing of MPOR shall be based on each Nasdaq Quoting Market Participant's pro rata contribution to MPOR. In no event shall the amount of revenue shared with Nasdaq Quoting Market Participants exceed MPOR. To the extent market data revenue is subject to year-end adjustment, MPOR revenue may be adjusted accordingly.]

(v)–(w) No change.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Nasdaq has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Nasdaq is proposing to modify the scope of its current programs for revenue sharing by replacing its current general revenue sharing program under NASD Rule 7010(u) with a program limited to transactions in Nasdaq-listed securities reported to the Trade Reporting Service of the Nasdaq Market Center. The program will be similar in structure to Nasdaq's current program, in that it will share a percentage of operating revenue with members based on their pro rata contribution to such revenues. Like the revenue sharing program recently instituted by NYSE Arca, Inc. (''NYSE Arca''),[7] however, it will be narrower in its application because it will be limited to transactions in Nasdaq-listed securities reported to the Trade Reporting Service of the Nasdaq Market Center. In SR–PCX–2005–121, the Pacific Exchange (now NYSE Arca) instituted a general revenue sharing program for Cross Orders in Nasdaq-listed securities. As provided in NYSE Arca Rule 7.31(s), a Cross Order allows an NYSE Arca member to internalize orders and report them through NYSE Arca after the matched order is processed through a limited algorithm designed to pursue price improvement opportunities on NYSE Arca and markets to which it routes.

Under Nasdaq's proposal, Nasdaq Market Makers and Nasdaq ECNs (*i.e.*, market makers and ECNs that post quotes in one or more Nasdaq-listed stocks in the Nasdaq Market Center) would be eligible to share in Reporting Participant Operating Revenue (''RPOR'') associated with transactions in Nasdaq-listed securities reported to the Trade Reporting Service of the Nasdaq Market Center. RPOR is defined as operating revenue that is generated by Nasdaq Market Makers and ECNs from transaction fees and market data revenue attributable to trade reports. RPOR will not include any investment income or regulatory monies.

The proposed new rule provides that the amount of revenue shared with Nasdaq Market Makers and Nasdaq ECNs under NASD Rule 7010(g)(2) may not exceed RPOR. As with the current rule, Nasdaq's Board of Directors (either acting through its Finance Committee or as a whole) will have the authority to determine on an ongoing basis the appropriate amount of RPOR to be shared with Nasdaq Market Makers and Nasdaq ECNs, on a pro rata basis. In making this determination, the Board will balance the objective of sharing a meaningful percentage of RPOR with the objective of maintaining Nasdaq's financial integrity. In particular, Nasdaq will not compromise its regulatory responsibilities by sharing revenue that would more appropriately be used to fund regulatory responsibilities. Nasdaq will be mindful of its regulatory responsibilities when determining its working capital needs. This determination will be made, and the credits will be provided, on a quarterly basis.

These changes are designed to provide a competitive response to efforts by NYSE Arca and potentially other venues to attract order flow that is matched by a broker-dealer and then submitted to a self-regulatory organization for clearing and reporting to the tape. Nasdaq evaluated the economics of modifying its current

[6] With Nasdaq's permission, the Commission modified the proposed rule text to add italics to item (g)(1). See e-mail from John Yetter, Senior Associate General Counsel, Nasdaq, to Joseph Morra, Special Counsel, Division of Market Regulation, Commission, dated June 28, 2006.

[7] Securities Exchange Act Release No. 52672 (October 25, 2005), 70 FR 66885 (November 3, 2005) (SR–PCX–2005–121).

approach to revenue sharing and determined that the approach reflected in the proposed rule was feasible and appropriate, given the costs involved and competitive concerns.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 15A of the Act,[8] in general, and with Sections 15A(b)(5)[9] and (b)(6) of the Act,[10] in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system which the NASD operates or controls; and in that it is designed to facilitate transactions in securities, to promote just and equitable principles of trade, to enhance competition, and to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[11] and Rule 10b–4(f)(6) thereunder.[12]

At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

Nasdaq has requested that the Commission waive the 30-day operative delay contained in Rule 19b–4(f)(6)(iii) under the Act[13] based upon a representation that the proposal will allow Nasdaq to implement more competitive pricing for transactions reported to the trade reporting service of the Nasdaq Market Center, and in that it is intended as a response to a similar program instituted by a competitor on an immediately effective basis. In light of the foregoing, the Commission believes such waiver is consistent with the protection of investors and the public interest. Accordingly, the Commission designates the proposal to be effective and operative upon filing with the Commission.[14]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–NASD–2006–077 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NASD–2006–077. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the NASD. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NASD–2006–077 and should be submitted on or before July 31, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[15]

Nancy M. Morris,

Secretary.

[FR Doc. E6–10713 Filed 7–7–06; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–54088; File No. SR–NASD–2004–135]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Granting Approval of Proposed Rule Change and Amendment Nos. 1, 2, and 3 Thereto, and Notice of Filing and Order Granting Accelerated Approval of Amendment No. 4 to the Proposed Rule Change, to Adopt NASD Rule 2441 to Require Disclosure and Consent When Trading on a Net Basis With Customers

June 30, 2006

I. Introduction

On September 1, 2004, the National Association of Securities Dealers, Inc. (''NASD'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to require disclosure and consent when trading on a net basis with customers. NASD amended the proposed rule change on February 16, 2005,[3] February 25, 2005,[4] and March 21, 2005.[5] The

[8] 15 U.S.C. 78*o*–3.

[9] 15 U.S.C. 78*o*–3(b)(5)

[10] 15 U.S.C. 78*o*–3(b)(6).

[11] 15 U.S.C. 78s(b)(3)(A).

[12] 17 CFR 240.19b–4(f)(6).

[13] 17 CFR 240.19b–4(f)(6)(iii).

[14] For purposes only of waiving the 30-day operative delay of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[15] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Amendment No. 1.

[4] *See* Amendment No. 2.

[5] *See* Amendment No. 3.

proposed rule change, as modified by Amendment Nos. 1, 2, and 3, was published for notice and comment in the **Federal Register** on April 6, 2005.[6] The Commission received three comments on the proposal.[7] On September 13, 2005, NASD responded to the comments, and amended the proposed rule change.[8] This order provides notice of filing of Amendment No. 4, and approves the proposed rule change as modified by Amendment Nos. 1, 2, 3, and grants accelerated approval to Amendment No. 4.

II. Summary of Comments

The Commission received a total of three comment letters on the NASD's proposal to require consent and disclosure when trading with customers on a net basis. One commenter requested clarification with respect to the interplay between the proposal and NASD Rule 4632. The other two comment letters expressed various objections to the proposal. The following summary of comments provides an overview of the commenters' concerns.

• *With Respect to Non-Institutional Clients, Requiring Mandatory, Written, Pre-trade Disclosure and Consent on an Order-By-Order Basis is Unnecessarily Burdensome to Broker-Dealers*

One commenter asserts that the rule as proposed places an unnecessary burden on broker-dealers when trading on a net basis on behalf of non-institutional clients. The rule requires that, for non-institutional clients, broker-dealers must provide pre-trade disclosure to and obtain consent from the client in writing on an order-by-order basis.[9] The commenter stated that ''the actions detailed in this proposed rule change would be confusing to the client, costly to the firm, and impossible to manage and track on an order-by-order basis.'' [10] The commenter expressed concern that ''[t]he proposed rule would burden the firm with additional time and money spent on record keeping and auditing practices'' and hinder a broker-dealer's ability to obtain best execution of its customers' orders.[11] Similarly, another commenter—while agreeing in principle with disclosure and consent rules—stated that the requirement ''for a knowing, written consent on an order-by-order basis * * * is impractical where most orders are not taken in writing, and there is no opportunity to obtain [such a consent].'' [12] This commenter proposed modifying the rule to permit the use of negative consent letters (similar to what the rule requires vis-à-vis institutional clients) or of obtaining oral consent on an order-by-order basis and to permit such consent to be evidenced on the customer order ticket.[13]

Moreover, the two commenters opined that the additional burdens placed on broker-dealers by the rule could not be justified by any added benefit to investors.[14] One commenter pointed out that, because the advent of decimal pricing in 2000 substantially reduced the practice of net trading generally, the rule would have little practical benefit.[15]

• *With Respect to Institutional Clients, Requiring Disclosure and Consent via Negative-Consent Letters is Unnecessarily Burdensome to Broker-Dealers*

Regarding institutional clients, the commenters similarly objected to the rule's consent and disclosure requirements via a ''negative consent'' letter as unnecessarily burdensome. One commenter stated that the rule was wholly unnecessary because ''investors already receive a 'net' trading disclosure when an account is opened * * * [and] institutional investors by nature are accredited and sophisticated.'' [16] Another commenter, citing the declining practice of net trading since decimalization, argued that ''the costs and burden of sending, receiving and tracking negative consent letters are excessive in light of the fact that institutional customers would receive the requisite level of protection, if not greater, by providing verbal consent on an order-by-order basis.'' [17] This commenter therefore suggested modifying the proposed rule to allow the use of negative consent letters or of obtaining oral consent on an order-by-order basis and to permit the consent to be evidenced on the customer order ticket.[18]

• *Member Firms and Other Registered Broker-Dealers Should Be Explicitly Exempt from the Proposed Rule*

One commenter requested that the NASD clarify the proposed rule change to ''confirm that member firms and other registered broker-dealers are exempt from the requirements of the Proposed Rule, as they are neither institutional nor non-institutional customers.'' [19]

• *The Proposed Rule Should Be Clarified With Respect to Net Orders Routed Between Broker-Dealers*

The commenter further requested that the NASD clarify the proposed rule change to ''confirm [that] an executing broker-dealer handling an order marked 'net' routed to it from an originating broker-dealer has no consent and disclosure obligation to the customer of the originating broker-dealer for whom it is handling the order.'' [20]

• *The Proposed Rule Potentially Conflicts With Rule 4632(d)(3)(A) Regarding Reporting Trades Exclusive of Any Mark-Up, Mark-Down, or Service Charge*

One commenter noted a potential conflict between the proposed rule and Rule 4632(d)(3)(A), which states that trades must be reported exclusive of any mark-up, mark-down, or service charge.[21]

III. The NASD's Response to Comments

NASD responded to the comments in Amendment No. 4. Regarding the commenters' assertion that the proposed disclosure and consent requirements were unnecessary for institutional customers, NASD amended the proposed rule change to allow members the option of obtaining consent from institutional customers orally, on an order-by-order basis. However, NASD does not believe a one-time disclosure

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[6] *See* Securities Exchange Act Release No. 51457 (March 31, 2005), 70 FR 17489.

[7] *See* April 20, 2005 letter from David Sieradzki, Esquire, Milbank Tweed, to Lourdes Gonzales, Division of Market Regulation, SEC (via e-mail) (''Milbank Letter''); April 27, 2005 letter from Klindt Ginsberg, Managing Director, The Seidler Companies, Inc. (via e-mail) (''Seidler Letter''); May 4, 2005 letter from Amal Aly and Ann Vlcek, Vice Presidents and Associate General Counsels, Securities Industry Association (''SIA''), to Jonathan G. Katz, Secretary, SEC (''SIA Letter'').

[8] *See* Amendment No 4.

[9] This contrasts with the lower burden for institutional clients under the proposed rule, in which broker-dealers may fulfill their disclosure and consent requirements via a one-time ''negative consent'' letter. *See* Securities Exchange Act Release No. 51457 (March 31, 2005), 70 FR 17489 (April 6, 2005) (SR–NASD–2004–135).

[10] Seidler Letter.

[11] *Id.*

[12] SIA Letter at 5.

[13] SIA Letter at 2, 5. The letter further recommended that, for firms choosing to obtain oral consent on an order-by-order basis, pre-trade disclosure be required in the form of a one-time comprehensive disclosure statement, and also that, for fiduciaries of non-institutional customers granted trading discretion who on their own qualify as an ''institutional account'' under the proposed rule, members be permitted to obtain the consent of such fiduciaries in the same manner as permitted for their institutional customers. *Id.*

[14] *See, e.g.*, Seidler Letter (''Having the client sign a disclosure document prior to each and every trade provides no benefit. It will confuse the client and will provide no additional information that is not available elsewhere.''); SIA Letter at 5 (''[N]o purpose is served by imposing onerous and impractical requirements on customers who do wish to consent to [trading on a net basis].'').

[15] SIA Letter at 4.

[16] Seidler Letter.

[17] SIA Letter at 4.

[18] *Id.* at 2, 4.

[19] *Id.* at 2.

[20] SIA Letter at 2.

[21] Milbank Letter.

would be appropriate under such circumstances, thus, NASD proposes that members that choose to obtain oral consent on an order-by-order basis must also explain the terms and conditions for handling the order to the institutional customer before each transaction, and provide the institutional customer with ''a meaningful opportunity to object to the execution of the transaction on a net basis.'' Additionally, members must document the customer's understanding of the terms and conditions of the order and the customer's consent on an order-by-order basis.

Regarding the comments relating to net transactions with non-institutional customers, NASD states it ''recognizes the burdens that result from having to obtain written consent on an order-by-order basis'' but believes the written disclosure and consent requirements are important to ensure that information regarding members' methods of compensation on transactions is provided to non-institutional customers, and that such customers agree to the methods of compensation. NASD does not believe that the market information available to customers will assist customers to determine whether a member is trading net or to understand the ramifications for the customer of trading net. Ultimately, NASD believes that benefits of requiring member disclosure and consent outweigh the related burdens to members.

NASD amended the proposal to allow a member, absent instructions to the contrary, to look to the institutional or non-institutional status of the fiduciary, rather than the underlying account, when deciding which method of disclosure and consent is allowable under the proposal.

NASD clarified that the scope of the proposal does not include orders received from member firms and other registered broker-dealers. As such, the proposal would not apply to orders received from members and other registered broker-dealers, nor would a receiving broker-dealer handling an order marked ''net'' routed to it from an originating broker-dealer have consent and disclosure obligations to the customer of the originating broker-dealer.[22] In both scenarios, the originating broker-dealer would be responsible for adhering to the requirements.

Finally, with regard to the possible inconsistency between net trading and NASD Rule 4632(d)(3)(A), NASD explained that the trade reporting requirements for net trades ''are not germane to this proposed rule change'' and that no changes to those requirements are needed.[23]

IV. Discussion and Commission Findings

The Commission has reviewed carefully the proposed rule change, the comment letters, and the NASD's response to the comments, and finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities association.[24] Specifically, the Commission finds that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act, which requires, among other things, that NASD's rules be designed to prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade, and, in general, protect investors and the public interest. The Commission believes that the proposed rule change should promote investor protection by codifying the requirement that members provide disclosure and obtain customer consent when trading on a net basis. The consent provided by non-institutional investors must evidence the customer's understanding of the terms and conditions of the order. The Commission also believes that the benefit to investors of requiring certain disclosures and obtaining customer consent when trading on a net basis outweighs the additional responsibilities placed on broker-dealers.

The Commission understands the commenters' assertion that the proposed rule change's disclosure and consent requirements were unnecessary for institutional customers, and is satisfied that NASD's modification of the proposal to require that members that choose to obtain oral consent on an order-by-order basis also explain the terms and conditions for handling the order to the institutional customer before each transaction and provide the institutional customer with an opportunity to object to the execution of the transaction on a net basis in a meaningful way to be a reasonable resolution of the issue. The Commission also believes it is reasonable and not unduly burdensome to require members to document a customer's understanding of the terms and conditions of the order and the customer's consent on an order-by-order basis.

The Commission believes that the modifications to the proposed rule change that NASD made in response to issues raised by the commenters are reasonable and designed to ease the burdens placed on members without sacrificing the benefits to investors contemplated by the proposal. For example, the Commission believes that (i) absent instructions to the contrary, it is reasonable for a member to look to the institutional or non-institutional status of the fiduciary, rather than the underlying account, when deciding which method of disclosure and consent is consistent with the rule, and (ii) NASD's decision to allow members the option of obtaining consent from institutional customers orally on an order-by-order basis, but not allowing a one-time disclosure under such circumstances, is consistent with investor protection and the public interest. Additionally, the Commission is satisfied that the clarifications NASD offered in response to the comments should provide sufficient guidance to allow members to satisfy the requirements of the rule. Finally, the Commission agrees with NASD that the trade reporting requirements for net trades contained in NASD Rule 4632(d)(3)(A) are not implicated in this proposed rule change.

The Commission finds good cause for approving Amendment No. 4 on an accelerated basis. Amendment No. 4 modifies the proposal in response to issues raised by the commenters. Because Amendment No. 4 raises no novel issues, and provides improvements to the proposed rule change in direct response to issues raised by the commenters, the Commission finds good cause for approving Amendment No. 4 before the 30th day since its publication in the **Federal Register**.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act[25], that the proposed rule change (SR–NASD–2004–135), as modified by Amendment Nos. 1, 2, 3 be, and it hereby is, approved, and Amendment No. 4 is approved on an accelerated basis.

[22] *Id.* at 10–11.

[23] *Id.* at 19.

[24] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[25] 15 U.S.C. 78s(b)(2).

[26] 17 CFR 200.30–3(a)(12).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[26]

Nancy M. Morris,

Secretary.

[FR Doc. E6–10718 Filed 7–7–06; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–54086; File No. SR–NYSE–2006–24]

Self-Regulatory Organizations; New York Stock Exchange LLC; Order Approving Proposed Rule Change To Lower the Minimum Display Size Requirement for Specialists To Maintain Undisplayed Reserve Interest at the Exchange Best Bid or Offer in the NYSE Hybrid Market

June 30, 2006.

On April 7, 2006, the New York Stock Exchange LLC (''NYSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend Exchange Rule 104(d)(i) to provide that specialists shall have the ability to maintain undisplayed reserve interest on behalf of the dealer account at the Exchange best bid or offer (''BBO''), provided at least 1,000 shares of dealer interest is displayed at that price, on the same side of the market as the reserve interest. This proposed rule change would lower the specialist's minimum display size requirement from at least 2,000 shares to at least 1,000 shares at the Exchange BBO and would conform the minimum display requirements for reserve interest for specialists and floor brokers.[3] In addition, the Exchange proposes to make a conforming change to Exchange Rule 104(d)(ii) to require that after an execution at the Exchange BBO that does not exhaust the specialist's interest, the specialist's displayed interest would be automatically replenished from its reserve interest, if any, so that at least a minimum of 1,000 shares is displayed (or whatever amount remains if the reserve interest is less than 1,000 shares). The proposed rule change was published for comment in the **Federal Register** on May 16, 2006.[4] The Commission received no comments regarding the proposal.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b) of the Act.[5] Specifically, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act[6] in that it is designed, among other things, to promote just and equitable principle of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

The Commission previously approved NYSE's proposal to permit specialists and floor brokers to maintain undisplayed reserve interest at the Exchange BBO, provided that they display a minimum number of shares and yield priority to all displayed interest.[7] In the Hybrid Market Order, the Commission found it to be consistent with the requirements of the Act to allow specialists to place reserve interest in the Display Book system because it could increase the liquidity available for execution at the Exchange BBO. The Commission specifically noted that the minimum size requirement and the priority of displayed interest over undisplayed reserve interest should help ensure that market participants continue to have an incentive to display quotes or orders on NYSE. The Commission stated that, taken together, these requirements could promote additional depth at the Exchange BBO, while preserving incentives for investors to display limit orders. Since NYSE's proposal would retain the requirements that specialists display a minimum amount of size at the BBO in order to maintain undisplayed reserve interest and that undisplayed reserve interest yield priority to displayed interest at that price, the Commission finds that the proposed rule change remains consistent with the requirements of the Act.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[8] that the proposed rule change (SR–NYSE–2006–24) is hereby approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Nancy M. Morris,

Secretary.

[FR Doc. E6–10716 Filed 7–7–06; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–54078; File No. SR–PCX–2005–54]

Self-Regulatory Organizations; NYSE Arca, Inc., Notice of Filing of Proposed Rule Change and Amendment Nos. 1 and 2 Thereto Requiring OTP Holders and OTP Firms To Participate in the Federal Trade Commission's National Do-Not-Call Registry

June 30, 2006.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on May 18, 2006, NYSE Arca, Inc. (''NYSE Arca'' or ''Exchange'')[3] filed with the Securities and Exchange Commission (''Commission'' or ''SEC'') the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. On May 26, 2006, NYSE Arca filed Amendment No. 1 to the proposed rule change.[4] On June 21, 2006, NYSE Arca filed Amendment No. 2 to the proposed rule change.[5] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

NYSE Arca proposes to amend NYSE Arca Rule 9.20. The proposed rule change would require OTP Holders and

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] NYSE permits floor brokers to maintain undisplayed reserve interest at the Exchange BBO, provided floor brokers display at least 1,000 shares. *See* NYSE Rule 70.20(c)(ii).

[4] *See* Securities Exchange Act Release No. 53780 (May 10, 2006), 71 FR 28398.

[5] 15 U.S.C. 78f(b). In approving this proposed rule change, the Commission considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[6] 15 U.S.C. 78f(b)(5).

[7] *See* Securities Exchange Act Release No. 53539 (March 22, 2006), 71 FR 16353 (March 31, 2006) (''Hybrid Market Order'').

[8] 15 U.S.C. 78s(b)(2).

[9] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] On March 6, 2006, the Pacific Exchange, Inc. filed a rule proposal, effective upon filing, to amend its rules to reflect these name changes: from Pacific Exchange, Inc. to NYSE Arca, Inc.; from PCX Equities, Inc. to NYSE Arca Equities, Inc.; from PCX Holdings, Inc., to NYSE Arca Holdings, Inc.; and from the Archipelago Exchange, L.L.C. to NYSE Arca, L.L.C. *See* File No. SR–PCX–2006–24 (March 6, 2006). This proposal has been amended to reflect these name changes.

[4] In Amendment No. 1, NYSE Arca partially amended the text of proposed amended NYSE Arca Rule 9.20 and made conforming and technical changes to the original filing.

[5] In Amendment No. 2, NYSE Arca made additional changes to the text of proposed amended NYSE Arca Rule 9.20 and to the original filing.

OTP Firms to participate in the Federal Trade Commission's (''FTC'') national do-not-call registry. The current text of Arca Rule 9.20(b) would be deleted. The text of the proposed rule change is set forth below. *Italics* indicate new text.

Rules of the NYSE Arca, Inc.

RULE 9 CONDUCTING BUSINESS WITH THE PUBLIC

* * * * *

Telemarketing

9.20(b) *(1) General Telemarketing Requirements. No OTP Firm, OTP Holder or associated person shall make any telephone solicitation, as defined in Section 9.20(b)(10)(B) to:*

(A) Any residence of a person before the hour of 8 a.m. or after 9 p.m. (local time at the called party's location), unless:

(i) The OTP Firm or OTP Holder has an established business relationship with the person pursuant to Section 9.20(b)(10)(A);

(ii) The OTP Firm or OTP Holder has received that person's prior express invitation or permission; or

(iii) The person called is a broker or dealer.

(B) Any person that previously has stated that he or she does not wish to receive an outbound telephone call made by or on behalf of the OTP Firm or OTP Holder; or

(C) Any person who has registered his or her telephone number on the Federal Trade Commission's national do-not-call registry.

(2) *National Do-Not-Call Registry Exceptions. An OTP Firm or OTP Holder will not be liable for violating Section 9.20(b)(1)(C) if:*

(A) *The OTP Firm or OTP Holder has an established business relationship with the recipient of the call. A person's request to be placed on an OTP Firm's or OTP Holder's firm-specific do-not-call list terminates the established business relationship exception to that national do-not-call registry provision for that OTP Firm or OTP Holder even if the person continues to do business with the OTP Firm or OTP Holder;*

(B) *The OTP Firm or OTP Holder has obtained the person's prior express invitation or permission. Such permission must be evidenced by a signed, written agreement between the person and the OTP Firm or OTP Holder that states that the person agrees to be contacted by the OTP Firm or OTP Holder and includes the telephone number to which the calls may be placed; or*

(C) *The associated person making the call has a personal relationship with the recipient of the call.*

(3) *Safe Harbor Provision. The OTP Firm, OTP Holder or associated person making telephone solicitations will not be liable for violating Section 9.20(b)(1)(C) if the OTP Firm, OTP Holder or associated person demonstrates that the violation is the result of an error and that as part of the OTP Firm's or OTP Holder's routine business practice it meets the following standards:*

(A) *The OTP Firm or OTP Holder has established and implemented written procedures to comply with the national do-not-call rules;*

(B) *The OTP Firm or OTP Holder has trained its personnel, and any entity assisting in its compliance, in procedures established pursuant to the national do-not-call rules;*

(C) *The OTP Firm or OTP Holder has maintained and recorded a list of telephone numbers that it may not contact; and*

(D) *The OTP Firm or OTP Holder uses a process to prevent telephone solicitations to any telephone number on any list established pursuant to the do-not-call rules, employing a version of the national do-not-call registry obtained from the administrator of the registry no more than thirty-one (31) days prior to the date any call is made, and maintains records documenting this process.*

(4) Procedures. Prior to engaging in telemarketing, an OTP Firm or OTP Holder must institute procedures to comply with Section 9.20(b)(1). Such procedures must meet the minimum standards:

(A) Written policy. The OTP Firm or OTP Holder must have a written policy available upon demand for maintaining a do-not-call list.

(B) Training of personnel engaged in telemarketing. Personnel engaged in any aspect of telemarketing must be informed and trained in the existence and use of the do-not-call list, including the policies and procedures of the firm regarding communication with the public.

(C) Recording, honoring do-not-call requests. If an OTP Firm or OTP Holder receives a request from a person not to receive calls from that OTP Firm or OTP Holder, the OTP Firm or OTP Holder must record the request and place the person's name, if provided, and telephone number on the firm's do-not-call list at the time the request is made. The OTP Firm or OTP Holder must honor a person's do-not-call request within a reasonable time from the date such request is made. This period may not exceed 30 days from the date of such request. If such requests are being recorded or maintained by a party other than the OTP Firm or OTP Holder on whose behalf the telemarketing call is made, the OTP Firm or OTP Holder on whose behalf the telemarketing call is made will be liable for any failure to honor the do-not-call request.

(D) Identification of sellers and telemarketers. An OTP Firm or OTP Holder or person associated with an OTP Firm or OTP Holder making a call for telemarketing purposes must provide the called party with the name of the individual caller, the name of the OTP Firm or OTP Holder, an address or telephone number at which the OTP Firm or OTP Holder may be contacted, and that the purpose of the call is to solicit the purchase or sale of securities or a related service. The telephone number provided may not be a 900 number or any other number for which charges exceed local or long distance transmission charges.

(E) Affiliated persons or entities. In the absence of a specific request by the person to the contrary, a person's do-not-call request shall apply to the OTP Firm or OTP Holder making the call, and will not apply to affiliated entities unless the consumer reasonably would expect them to be included given the identification of the caller and the product or service being advertised.

(F) Maintenance of do-not-call lists. An OTP Firm or OTP Holder making calls for telemarketing purposes must maintain a record of the caller's request not to receive further telemarketing calls. A firm-specific do-not-call request must be honored for five years from the time the request is made.

(5) Wireless Communications.

(A) OTP Firms and OTP Holders are prohibited from using an automatic telephone dialing system or an artificial or prerecorded voice when initiating a telephone call to any telephone number assigned to a paging service, cellular telephone service, specialized mobile radio service, or other radio common carrier service, or any service for which the called party is charged for the call.

(B) The provisions set forth in this rule are applicable to OTP Firms and OTP Holders telemarketing or making telephone solicitations calls to wireless telephone numbers.

(6) Outsourcing Telemarketing. If an OTP Firm or OTP Holder uses another entity to perform telemarketing services on its behalf, the OTP Firm or OTP Holder remains responsible for ensuring compliance with all provisions contained in this rule.

(7) Pre-Recorded Messages.

(A) An OTP Firm or OTP Holder may not initiate any telephone call to any residence using an artificial or prerecorded voice to deliver a message,

without the prior express consent of the person called, unless the call:

(i) Is not made for a commercial purpose;

(ii) Is made for a commercial purpose, but does not include or introduce an unsolicited advertisement or constitute a telephone solicitation; or

(iii) Is made to any person with whom the OTP Firm or OTP Holder has an established business relationship at the time the call is made.

(B) All artificial or prerecorded telephone messages shall:

(i) At the beginning of the message, state clearly the identity of the OTP Firm or OTP Holder that is responsible for initiating the call. The OTP Firm or OTP Holder responsible for initiating the call must state the name under which the OTP Firm or OTP Holder is registered to conduct business with the applicable State Corporation Commission (or comparable regulatory authority); and

(ii) During or after the message, the OTP Firm or OTP Holder must state clearly the telephone number (other than that of the autodialer or prerecorded message player that placed the call) of such OTP Firm or OTP Holder. The telephone number provided may not be a 900 number or any other number for which charges exceed local or long distance transmission charges.

(iii) For telemarketing messages to a residence, such telephone number, mentioned in Section 9.20(b)(7)(B)(ii) above, must permit any person to make a do-not-call request during regular business hours for the duration of the telemarketing campaign.

(8) Telephone Facsimile or Computer Advertisements

No OTP Firm, OTP Holder or associated person may use a telephone facsimile machine, computer or other device to send an unsolicited advertisement to a telephone facsimile machine, computer or other device.

(A) For purposes of Section 9.20(b)(8) of this rule, a facsimile advertisement is not ''unsolicited'' if the recipient has granted the OTP Firm, OTP Holder or associated person prior express invitation or permission to deliver the advertisement. Such express invitation or permission must be evidenced by a signed, written statement that includes the facsimile number to which any advertisements may be sent and clearly indicates the recipient's consent to receive such facsimile advertisements from the OTP Firm, OTP Holder or associated person.

(B) OTP Firms, OTP Holders and associated persons must clearly mark, in a margin at the top or bottom of each page of the transmission, the date and time it is sent and an identification of the OTP Firm, OTP Holder or associated person sending the message and the telephone number of the sending machine or of the OTP Firm, OTP Holder or associated person sending the transmission.

(9) Caller Identification Information

(A) Any OTP Firm or OTP Holder that engages in telemarketing, as defined in Section 9.20(b)(10)(B) of this rule, must transmit caller identification information. Such caller identification information must include either the Calling Party Number (''CPN'') or the calling party's billing number, also known as the Charge Number (''ANI''), and, when available from the telephone carrier, the name of the OTP Firm or OTP Holder. The telephone number so provided must permit any person to make a do-not-call request during regular business hours. Whenever possible, CPN is the preferred number and should be transmitted.

(B) Any OTP Firm or OTP Holder that engages in telemarketing, as defined in Section 9.20(b)(10)(B) of this rule, is prohibited from blocking the transmission of caller identification information.

(C) Provision of caller identification information does not obviate the requirement for a caller to verbally supply identification information during a call.

(10) Definitions.

(A) For purposes of Section 9.20, an OTP Firm or OTP Holder has an ''established business relationship'' with a person if:

(i) The person has made a financial transaction or has a security position, a money balance, or account activity with the OTP Firm or OTP Holder or at a clearing firm that provides clearing services to such OTP Firm or OTP Holder within the previous 18 months immediately preceding the date of the telemarketing call;

(ii) The OTP Firm or OTP Holder is the broker-dealer of record for an account of the person within the previous 18 months immediately preceding the date of the telemarketing call; or

(iii) The person has contacted the OTP Firm or OTP Holder to inquire about a product service offered by the OTP Firm or OTP Holder within the previous three months immediately preceding the date of the telemarketing call, which relationship has not been previously terminated by either party.

A person's established business relationship with an OTP Firm or OTP Holder does not extend to the OTP Firm's or OTP Holder's affiliated entities unless the person would reasonably expect them to be included, given the nature and type of products or services offered by the affiliate and the identity of the affiliate. Similarly, a person's established business relationship with an OTP Firm's or Holder's affiliate does not extend to the OTP Firm or OTP Holder unless the person would reasonably expect the OTP Firm or OTP Holder to be included. A person's request to be placed on an OTP Firm's or OTP Holder's firm-specific do-not-call list as set forth in Section 9.20(b)(1)(B) of this rule terminates an established business relationship for purposes of telemarketing and telephone solicitation, even if the person continues to do business with the OTP Holder or OTP Firm.

(B) The terms ''telemarketing'' and ''telephone solicitation'' mean the initiation of a telephone call or message for the purpose of encouraging the purchase or rental of, or investment in, property, goods, or services, which is transmitted to any person.

(C) The term ''personal relationship'' means any family member, friend or acquaintance of the telemarketer making the call.

(D) The term ''account activity'' shall include, but not be limited to, purchases, sales, interest credits or debits, charges or credits, dividend payments, transfer activity, securities receipts or deliveries, and/or journal entries relating to securities or funds in the possession or control of the OTP Firm or OTP Holder.

(E) The term ''broker-dealer of record'' refers to the broker-dealer identified on a customer's account application for accounts held directly at a mutual fund or variable insurance product issuer.

(F) The terms ''automatic telephone dialing system'' and ''autodialer'' mean equipment which has the capacity to store or produce telephone numbers to be called using a random or sequential number generator and to dial such numbers.

(G) The term ''telephone facsimile machine'' means equipment which has the capacity to transcribe text or images (or both) from paper, into an electronic signal and to transmit that signal over a regular telephone line, or to transcribe text or images (or both) from an electronic signal received over a regular telephone line onto paper.

(H) The term ''unsolicited advertisement'' means any material advertising the commercial availability or quality of any products or services which is transmitted to any person without that person's prior express invitation or permission.

Rule 9.20(c)-(d)—No Change.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections (A), (B) and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this Amendment No. 2 is to make the proposed rule consistent with NYSE Rule 404A by including provisions concerning general telemarketing requirements, procedures, wireless communications, outsourcing telemarketing, pre-recorded messages, telephone facsimile or computer advertisements and caller identification. This Amendment No. 2 replaces the original filing in its entirety. In 2003, the FTC, via its Telemarketing Sales Rule, and the Federal Communications Commission (''FCC''), via its Miscellaneous Rules Relating to Common Carriers, established requirements for sellers and telemarketers to participate in a national do-not-call registry.[6] Since June 2003, consumers have been able to enter their home telephone numbers into the national do-not-call registry, which is maintained by the FTC. Under rules of the FTC and FCC, sellers and telemarketers generally are prohibited from making telephone solicitations to consumers whose numbers are listed in the national do-not-call registry. The FCC's do-not-call rules apply to broker-dealers while the FTC's rules do not.[7]

In February 2005, the SEC requested that NYSE Arca adopt the proposed telemarketing rules to require OTP Holders and OTP Firms to participate in the do-not-call registry.[8] Because broker-dealers are subject to the FCC's do-not-call rules, NYSE Arca modeled its rules in this area after those of the FCC and codified these do-not-call requirements in NYSE Arca Rule 9.20(b), with minor modifications tailoring the rules to broker-dealer activities and the securities industry. Current NYSE Arca Rule 9.20(b) will be deleted and replaced in its entirety with proposed Rule 9.20(b) set forth in Exhibit 5.

Safe Harbor Provision for the National Do-Not-Call Registry Requirements

The FCC and FTC each provided persons subject to their respective do-not-call rules a ''safe harbor'' providing that a seller or telemarketer is not liable for a violation of the do-not-call rules that is the result of an error if the seller or telemarketer's routine business practice meets certain standards. The Exchange has provided a parallel safe harbor in paragraph (3) of proposed NYSE Arca Rule 9.20(b); the safe harbor is limited the requirements of paragraph (1)(C) of proposed NYSE Arca Rule 9.20(b), which prohibits an OTP Firm, OTP Holder or associated person from initiating any telephone solicitation to any person who has registered his or her phone number with the national do-not-call registry.

To be eligible for this proposed NYSE Arca Rule 9.20(b) safe harbor, an OTP Holder or OTP Firm must demonstrate that the OTP Holder's or OTP Firm's routine business practice meets four standards in proposed Rule 9.20(b). First, the OTP Holder or OTP Firm must have established and implemented written procedures to comply with the national do-not-call rules. Second, the OTP Holder or OTP Firm must have trained its personnel, and any entity assisting it in its compliance, in procedures established pursuant to the national do-not-call rules. Third, the OTP Holder or OTP Firm must have maintained and recorded a list of telephone numbers that the OTP Holder or OTP Firm may not contact. Fourth, the OTP Holder or OTP Firm must use a process to prevent telephone solicitations to any telephone number on any list established pursuant to the do-not-call rules, employing a version of the national do-not-call registry obtained from the FTC no more than *thirty-one (31)* days prior to the date any call is made, and must maintain records documenting this process.

Other Provisions

This Amendment No. 2 includes additional provisions concerning general telemarketing requirements, procedures, wireless communications, outsourcing telemarketing, pre-recorded messages, telephone facsimile or computer advertisements and caller identification. Proposed Section 9.20(b)(1) outlines the General Telemarketing Requirements specifying when OTP Holders, OTP Firms and associated persons may not contact residences and certain persons. Proposed Section 9.20(b)(2) provides an exception for calling a person on the national do-not-call registry if the OTP Holder or OTP Firm has the person's permission to make calls, or if the OTP Holder or OTP Firm has an established business relationship with the person. Proposed Section 9.20(b)(4) sets forth the procedures that OTP Firms or OTP Holders must institute to comply with the General Telemarketing Requirements set forth in Section 9.20(b)(1). Proposed Section 9.20(b)(5) sets forth when OTP Firms and OTP Holders are prohibited from using wireless communications. Proposed Section 9.20(b)(6) sets forth the requirement that OTP Firms and OTP Holders outsourcing telemarketing remain responsible for compliance with Section 9.20(b). Proposed Section 9.20(b)(7) sets forth the requirements that OTP Firms and OTP Holders must satisfy to utilize pre-recorded messages. Proposed Section 9.20(b)(8) prohibits OTP Firms, OTP Holders or associated person from using a telephone facsimile machine, computer or other device to send unsolicited advertisements to a telephone facsimile machine, computer or other device. Finally, proposed Section 9.20(b)(9) sets forth the requirement that OTP Firms and OTP Holders engaging in telemarketing must transmit caller identification information.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with section 6(b) of the Exchange Act[9] in general, and furthers the objectives of section 6(b)(5)[10] in particular, because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. The

[6] The do-not-call rules of the FCC and FTC are very similar in terms of substance, in part, because Congress directed the FCC to consult with the FTC to maximize consistency between their respective do-not-call rules. *See* The Do-Not-Call Implementation Act, 108 Public Law 10, 117 Stat. 557 (March 11, 2003).

[7] *See* 15 U.S.C. 6102(d)(2)(A), which provides that ''The Rules promulgated by the Federal Trade Commission under subsection (a) shall not apply to * * * [among other persons, brokers or dealers]. * * *'' The FTC's rules were not promulgated under 15 U.S.C. 6102. The FCC's rules are not subject to this limitation and apply to all sellers and telemarketers.

[8] The Telemarketing and Consumer Fraud and Abuse Prevention Act of 1994 (codified at 15 U.S.C. 6102) requires the SEC to promulgate telemarketing rules substantially similar to those of the FTC or to direct self-regulatory organizations to promulgate such rules unless the SEC determines that such rules are not in the interest of investor protection.

[9] 15 U.S.C. 78f(b).

[10] 15 U.S.C. 78f(b)(5).

Exchange believes that the proposed rule change will increase the protection of investors by enabling investors who do not want to receive telephone solicitations from OTP Firms or OTP Holders to receive the benefits and protections of the national do-not-call registry.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Exchange Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments on the proposed rule change were neither solicited nor received by the Exchange.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Exchange Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*.
- Please include File Number SR–PCX–2005–54 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–PCX–2005–54. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, Station Place, 100 F Street, NE., Washington, DC 20549–1090. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–PCX–2005–54 and should be submitted on or before July 31, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Nancy M. Morris,

Secretary.

[FR Doc. E6–10681 Filed 7–7–06; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–54079; File No. SR–PCX–2005–97]

Self-Regulatory Organizations; NYSE Arca, Inc., Notice of Filing of Proposed Rule Change and Amendment Nos. 1 and 2 Thereto Requiring ETP Holders To Participate in the Federal Trade Commission's National Do-Not-Call Registry

June 30, 2006.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on May 18, 2006, NYSE Arca, Inc. (''NYSE Arca'' or ''Exchange'')[3] filed with the Securities and Exchange Commission (''Commission'' or ''SEC'') the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. On May 26, 2006, NYSE Arca filed Amendment No. 1 to the proposed rule change.[4] On June 21, 2006, NYSE Arca filed Amendment No. 2 to the proposed rule change.[5] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange, through its wholly-owned subsidiary NYSE Arca Equities, Inc. (''NYSE Arca Equities'' or the ''Corporation''), proposes to amend NYSE Arca Equities Rule 9.20. The proposed rule change would require ETP Holders to participate in the Federal Trade Commission's (''FTC'') national do-not-call registry. The current text of Arca Equities Rule 9.20(b) would be deleted. The text of the proposed rule change is set forth below. *Italics* indicate new text.

NYSE Arca Equities Rules

RULE 9 CONDUCTING BUSINESS WITH THE PUBLIC

* * * * *

Telemarketing

9.20(b) *(1) General Telemarketing Requirements. No ETP Holder or associated person shall make any telephone solicitation, as defined in Section 9.20(b)(10)(B) to:*

(A) Any residence of a person before the hour of 8 a.m. or after 9 p.m. (local time at the called party's location), unless:

(i) The ETP Holder has an established business relationship with the person pursuant to Section 9.20(b)(10)(A);

(ii) The ETP Holder has received that person's prior express invitation or permission; or

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[11] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] On March 6, 2006, the Pacific Exchange, Inc. filed a rule proposal, effective upon filing, to amend its rules to reflect these name changes: from Pacific Exchange, Inc. to NYSE Arca, Inc.; from PCX Equities, Inc. to NYSE Arca Equities, Inc.; from PCX Holdings, Inc., to NYSE Arca Holdings, Inc.; and from the Archipelago Exchange, L.L.C. to NYSE Arca, L.L.C. *See* File No. SR–PCX–2006–24 (March 6, 2006). This proposal has been amended to reflect these name changes.

[4] In Amendment No. 1, NYSE Arca partially amended the text of proposed amended NYSE Arca Equities Rule 9.20 and made conforming and technical changes to the original filing.

[5] In Amendment No. 2, NYSE Arca made additional changes to the text of proposed amended NYSE Arca Equities Rule 9.20 and to the original filing.

(iii) The person called is a broker or dealer.

(B) Any person that previously has stated that he or she does not wish to receive an outbound telephone call made by or on behalf of the ETP Holder; or

(C) Any person who has registered his or her telephone number on the Federal Trade Commission's national do-not-call registry.

(2) *National Do-Not-Call Registry Exceptions. An ETP Holder will not be liable for violating Section 9.20(b)(1)(C) if:*

(A) *The ETP Holder has an established business relationship with the recipient of the call. A person's request to be placed on an ETP Holder's firm-specific do-not-call list terminates the established business relationship exception to that national do-not-call registry provision for that ETP Holder even if the person continues to do business with the ETP Holder;*

(B) *The ETP Holder has obtained the person's prior express invitation or permission. Such permission must be evidenced by a signed, written agreement between the person and the ETP Holder that states that the person agrees to be contacted by the ETP Holder and includes the telephone number to which the calls may be placed; or*

(C) *The associated person making the call has a personal relationship with the recipient of the call.*

(3) *Safe Harbor Provision. The ETP Holder or associated person making telephone solicitations will not be liable for violating Section 9.20(b)(1)(C) if the ETP Holder or associated person demonstrates that the violation is the result of an error and that as part of the ETP Holder's routine business practice it meets the following standards:*

(A) *The ETP Holder has established and implemented written procedures to comply with the national do-not-call rules;*

(B) *The ETP Holder has trained its personnel, and any entity assisting in its compliance, in procedures established pursuant to the national do-not-call rules;*

(C) *The ETP Holder has maintained and recorded a list of telephone numbers that it may not contact; and*

(D) *The ETP Holder uses a process to prevent telephone solicitations to any telephone number on any list established pursuant to the do-not-call rules, employing a version of the national do-not-call registry obtained from the administrator of the registry no more than thirty-one (31) days prior to the date any call is made, and maintains records documenting this process.*

(4) Procedures. Prior to engaging in telemarketing, an ETP Holder must institute procedures to comply with Section 9.20(b)(1). Such procedures must meet the minimum standards:

(A) Written policy. The ETP Holder must have a written policy available upon demand for maintaining a do-not-call list.

(B) Training of personnel engaged in telemarketing. Personnel engaged in any aspect of telemarketing must be informed and trained in the existence and use of the do-not-call list, including the policies and procedures of the firm regarding communication with the public.

(C) Recording, honoring do-not-call requests. If an ETP Holder receives a request from a person not to receive calls from that ETP Holder, the ETP Holder must record the request and place the person's name, if provided, and telephone number on the firm's do-not-call list at the time the request is made. The ETP Holder must honor a person's do-not-call request within a reasonable time from the date such request is made. This period may not exceed 30 days from the date of such request. If such requests are being recorded or maintained by a party other than the ETP Holder on whose behalf the telemarketing call is made, the ETP Holder on whose behalf the telemarketing call is made will be liable for any failure to honor the do-not-call request.

(D) Identification of sellers and telemarketers. An ETP Holder or person associated with an ETP Holder making a call for telemarketing purposes must provide the called party with the name of the individual caller, the name of the ETP Holder, an address or telephone number at which the ETP Holder may be contacted, and that the purpose of the call is to solicit the purchase or sale of securities or a related service. The telephone number provided may not be a 900 number or any other number for which charges exceed local or long distance transmission charges.

(E) Affiliated persons or entities. In the absence of a specific request by the person to the contrary, a person's do-not-call request shall apply to the ETP Holder making the call, and will not apply to affiliated entities unless the consumer reasonably would expect them to be included given the identification of the caller and the product or service being advertised.

(F) Maintenance of do-not-call lists. An ETP Holder making calls for telemarketing purposes must maintain a record of the caller's request not to receive further telemarketing calls. A firm-specific do-not-call request must be honored for five years from the time the request is made.

(5) Wireless Communications.

(A) ETP Holders are prohibited from using an automatic telephone dialing system or an artificial or prerecorded voice when initiating a telephone call to any telephone number assigned to a paging service, cellular telephone service, specialized mobile radio service, or other radio common carrier service, or any service for which the called party is charged for the call.

(B) The provisions set forth in this rule are applicable to ETP Holders telemarketing or making telephone solicitations calls to wireless telephone numbers.

(6) Outsourcing Telemarketing. If an ETP Holder uses another entity to perform telemarketing services on its behalf, the ETP Holder remains responsible for ensuring compliance with all provisions contained in this rule.

(7) Pre-Recorded Messages.

(A) An ETP Holder may not initiate any telephone call to any residence using an artificial or prerecorded voice to deliver a message, without the prior express consent of the person called, unless the call:

(i) Is not made for a commercial purpose;

(ii) Is made for a commercial purpose, but does not include or introduce an unsolicited advertisement or constitute a telephone solicitation; or

(iii) Is made to any person with whom the ETP Holder has an established business relationship at the time the call is made.

(B) All artificial or prerecorded telephone messages shall:

(i) At the beginning of the message, state clearly the identity of the ETP Holder that is responsible for initiating the call. The ETP Holder responsible for initiating the call must state the name under which the ETP Holder is registered to conduct business with the applicable State Corporation Commission (or comparable regulatory authority); and

(ii) During or after the message, the ETP Holder must state clearly the telephone number (other than that of the autodialer or prerecorded message player that placed the call) of such ETP Holder. The telephone number provided may not be a 900 number or any other number for which charges exceed local or long distance transmission charges.

(iii) For telemarketing messages to a residence, such telephone number, mentioned in Section 9.20(b)(7)(B)(ii) above, must permit any person to make

a do-not-call request during regular business hours for the duration of the telemarketing campaign.

(8) Telephone Facsimile or Computer Advertisements

No ETP Holder or associated person may use a telephone facsimile machine, computer or other device to send an unsolicited advertisement to a telephone facsimile machine, computer or other device.

(A) For purposes of Section 9.20(b)(8) of this rule, a facsimile advertisement is not ''unsolicited'' if the recipient has granted the ETP Holder or associated person prior express invitation or permission to deliver the advertisement. Such express invitation or permission must be evidenced by a signed, written statement that includes the facsimile number to which any advertisements may be sent and clearly indicates the recipient's consent to receive such facsimile advertisements from the ETP Holder or associated person.

(B) ETP Holders and associated persons must clearly mark, in a margin at the top or bottom of each page of the transmission, the date and time it is sent and an identification of the ETP Holder or associated person sending the message and the telephone number of the sending machine or of the ETP Holder or associated person sending the transmission.

(9) Caller Identification Information

(A) Any ETP Holder that engages in telemarketing, as defined in Section 9.20(b)(10)(B) of this rule, must transmit caller identification information. Such caller identification information must include either the Calling Party Number (''CPN'') or the calling party's billing number, also known as the Charge Number (''ANI''), and, when available from the telephone carrier, the name of the ETP Holder. The telephone number so provided must permit any person to make a do-not-call request during regular business hours. Whenever possible, CPN is the preferred number and should be transmitted.

(B) Any ETP Holder that engages in telemarketing, as defined in Section 9.20(b)(10)(B) of this rule, is prohibited from blocking the transmission of caller identification information.

(C) Provision of caller identification information does not obviate the requirement for a caller to verbally supply identification information during a call.

(10) Definitions.

(A) For purposes of Section 9.20, an ETP Holder has an ''established business relationship'' with a person if:

(i) The person has made a financial transaction or has a security position, a money balance, or account activity with the ETP Holder or at a clearing firm that provides clearing services to such ETP Holder within the previous 18 months immediately preceding the date of the telemarketing call;

(ii) The ETP Holder is the broker-dealer of record for an account of the person within the previous 18 months immediately preceding the date of the telemarketing call; or

(iii) The person has contacted the ETP Holder to inquire about a product service offered by the ETP Holder within the previous three months immediately preceding the date of the telemarketing call, which relationship has not been previously terminated by either party.

A person's established business relationship with an ETP Holder does not extend to the ETP Holder's affiliated entities unless the person would reasonably expect them to be included, given the nature and type of products or services offered by the affiliate and the identity of the affiliate. Similarly, a person's established business relationship with an ETP Holder's affiliate does not extend to the ETP Holder unless the person would reasonably expect the ETP Holder to be included. A person's request to be placed on an ETP Holder's firm-specific do-not-call list as set forth in Section 9.20(b)(1)(B) of this rule terminates an established business relationship for purposes of telemarketing and telephone solicitation, even if the person continues to do business with the ETP Holder.

(B) The terms ''telemarketing'' and ''telephone solicitation'' mean the initiation of a telephone call or message for the purpose of encouraging the purchase or rental of, or investment in, property, goods, or services, which is transmitted to any person.

(C) The term ''personal relationship'' means any family member, friend or acquaintance of the telemarketer making the call.

(D) The term ''account activity'' shall include, but not be limited to, purchases, sales, interest credits or debits, charges or credits, dividend payments, transfer activity, securities receipts or deliveries, and/or journal entries relating to securities or funds in the possession or control of the ETP Holder.

(E) The term ''broker-dealer of record'' refers to the broker-dealer identified on a customer's account application for accounts held directly at a mutual fund or variable insurance product issuer.

(F) The terms ''automatic telephone dialing system'' and ''autodialer'' mean equipment which has the capacity to store or produce telephone numbers to be called using a random or sequential number generator and to dial such numbers.

(G) The term ''telephone facsimile machine'' means equipment which has the capacity to transcribe text or images (or both) from paper, into an electronic signal and to transmit that signal over a regular telephone line, or to transcribe text or images (or both) from an electronic signal received over a regular telephone line onto paper.

(H) The term ''unsolicited advertisement'' means any material advertising the commercial availability or quality of any products or services which is transmitted to any person without that person's prior express invitation or permission.

Rule 9.20(c)–(d)—No Change.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections (A), (B) and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this Amendment No. 2 is to make the proposed rule consistent with NYSE Rule 404A by including provisions concerning general telemarketing requirements, procedures, wireless communications, outsourcing telemarketing, pre-recorded messages, telephone facsimile or computer advertisements and caller identification. This Amendment No. 2 replaces the original filing in its entirety. In 2003, the FTC, via its Telemarketing Sales Rule, and the Federal Communications Commission (''FCC''), via its Miscellaneous Rules Relating to Common Carriers, established requirements for sellers and telemarketers to participate in a national do-not-call registry.[6] Since June 2003,

[6] The do-not-call rules of the FCC and FTC are very similar in terms of substance, in part, because Congress directed the FCC to consult with the FTC to maximize consistency between their respective

Continued

consumers have been able to enter their home telephone numbers into the national do-not-call registry, which is maintained by the FTC. Under rules of the FTC and FCC, sellers and telemarketers generally are prohibited from making telephone solicitations to consumers whose numbers are listed in the national do-not-call registry. The FCC's do-not-call rules apply to broker-dealers while the FTC's rules do not.[7]

In February 2005, the SEC requested that NYSE Arca adopt the proposed telemarketing rules to require ETP Holders to participate in the do-not-call registry.[8] Because broker-dealers are subject to the FCC's do-not-call rules, NYSE Arca modeled its rules in this area after those of the FCC and codified these do-not-call requirements in NYSE Arca Equities Rule 9.20(b), with minor modifications tailoring the rules to broker-dealer activities and the securities industry. Current NYSE Arca Rule 9.20(b) will be deleted and replaced in its entirety with proposed Rule 9.20(b) set forth in Exhibit 5.

Safe Harbor Provision for the National Do-Not-Call Registry Requirements

The FCC and FTC each provided persons subject to their respective do-not-call rules a ''safe harbor'' providing that a seller or telemarketer is not liable for a violation of the do-not-call rules that is the result of an error if the seller or telemarketer's routine business practice meets certain standards. The Corporation has provided a parallel safe harbor in paragraph (3) of proposed NYSE Arca Equities Rule 9.20(b); the safe harbor is limited the requirements of paragraph (1)(C) of proposed NYSE Arca Equities Rule 9.20(b), which prohibits an ETP Holder or associated person from initiating any telephone solicitation to any person who has registered his or her phone number with the national do-not-call registry.

To be eligible for this proposed NYSE Arca Equities Rule 9.20(b) safe harbor, an ETP Holder must demonstrate that the ETP Holder's routine business practice meets four standards in proposed Rule 9.20(b). First, the ETP Holder must have established and implemented written procedures to comply with the national do-not-call rules. Second, the ETP Holder must have trained its personnel, and any entity assisting it in its compliance, in procedures established pursuant to the national do-not-call rules. Third, the ETP Holder must have maintained and recorded a list of telephone numbers that the ETP Holder may not contact. Fourth, the ETP Holder must use a process to prevent telephone solicitations to any telephone number on any list established pursuant to the do-not-call rules, employing a version of the national do-not-call registry obtained from the FTC no more than thirty-one (31) days prior to the date any call is made, and must maintain records documenting this process.

Other Provisions

This Amendment No. 2 includes additional provisions concerning general telemarketing requirements, procedures, wireless communications, outsourcing telemarketing, pre-recorded messages, telephone facsimile or computer advertisements and caller identification. Proposed Section 9.20(b)(1) outlines the General Telemarketing Requirements specifying when ETP Holders and associated persons may not contact residences and certain persons. Proposed Section 9.20(b)(2) provides an exception for calling a person on the national do-not-call registry if the ETP Holder has the person's permission to make calls, or if the ETP Holder has an established business relationship with the person. Proposed Section 9.20(b)(4) sets forth the procedures that ETP Holders must institute to comply with the General Telemarketing Requirements set forth in Section 9.20(b)(1). Proposed Section 9.20(b)(5) sets forth when ETP Holders are prohibited from using wireless communications. Proposed Section 9.20(b)(6) sets forth the requirement that ETP Holders outsourcing telemarketing remain responsible for compliance with Section 9.20(b). Proposed Section 9.20(b)(7) sets forth the requirements that ETP Holders must satisfy to utilize pre-recorded messages. Proposed Section 9.20(b)(8) prohibits ETP Holders or associated person from using a telephone facsimile machine, computer or other device to send unsolicited advertisements to a telephone facsimile machine, computer or other device. Finally, proposed Section 9.20(b)(9) sets forth the requirement that ETP Holders engaging in telemarketing must transmit caller identification information.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with section 6(b) of the Exchange Act[9] in general, and furthers the objectives of section 6(b)(5)[10] in particular, because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. The Exchange believes that the proposed rule change will increase the protection of investors by enabling investors who do not want to receive telephone solicitations from ETP Holders to receive the benefits and protections of the national do-not-call registry.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Exchange Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments on the proposed rule change were neither solicited nor received by the Exchange.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Exchange Act. Comments may be submitted by any of the following methods:

do-not-call rules. *See* The Do-Not-Call Implementation Act, 108 Pub. L. 10, 117 Stat. 557 (March 11, 2003).

[7] *See* 15 U.S.C. 6102(d)(2)(A), which provides that ''The Rules promulgated by the Federal Trade Commission under subsection (a) shall not apply to * * * [among other persons, brokers or dealers] .* * *'' The FTC's rules were not promulgated under 15 U.S.C. 6102. The FCC's rules are not subject to this limitation and apply to all sellers and telemarketers.

[8] The Telemarketing and Consumer Fraud and Abuse Prevention Act of 1994 (codified at 15 U.S.C. 6102) requires the SEC to promulgate telemarketing rules substantially similar to those of the FTC or to direct self-regulatory organizations to promulgate such rules unless the SEC determines that such rules are not in the interest of investor protection.

[9] 15 U.S.C. 78f(b).

[10] 15 U.S.C. 78f(b)(5).

Electronic Comments

• Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or

• Send an e-mail to *rule-comments@sec.gov*.

• Please include File Number SR–PCX–2005–97 on the subject line.

Paper Comments

• Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–PCX–2005–97. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, Station Place, 100 F Street, NE., Washington, DC 20549–1090. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–PCX–2005–97 and should be submitted on or before July 31, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Nancy M. Morris,

Secretary.

[FR Doc. E6–10685 Filed 7–7–06; 8:45 am]

BILLING CODE 8010–01–P

[11] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–54060; File No. SR–OCC–2006–07]

Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing of Proposed Rule Change Relating to a Surcharge for Non-Clearing Member Subscribers That Have Not Met a Mandated Conversion Date for Data Distribution Service

June 28, 2006.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on May 15, 2006, The Options Clearing Corporation (''OCC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change described in Items I, II, and III below, which items have been prepared primarily by OCC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested parties.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change would implement a surcharge to the monthly service fee charged to non-clearing member subscribers of OCC's Data Distribution Service (''DDS'') that have not converted to the new DDS format by the revised mandated conversion date of September 29, 2006.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for the Proposed Rule Change

In its filing with the Commission, OCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. OCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.[2]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The proposed rule change would implement a surcharge to the monthly ancillary service fee for non-clearing member subscribers that have not converted to the new DDS [3] format by the revised mandated conversion date of September 29, 2006.[4]

Background

Both clearing members and non-clearing members may subscribe to DDS. A clearing member may subscribe to DDS in order to receive in a machine readable format data processed by OCC that is proprietary to such clearing member (*e.g.*, position and post-trade entries) as well as non-proprietary data (*i.e.*, data not specific to the clearing member) produced by OCC (*e.g.*, options, series and prices). Non-clearing members may subscribe to DDS in order to receive certain non-proprietary data.

Discussion

In December, 2004, OCC informed all DDS subscribers that OCC was requiring them to convert to the new ENCORE [5] DDS format by February 28, 2006. Although OCC diligently worked with subscribers to facilitate their implementation of the new DDS format, it became apparent that subscribers needed additional time in order to complete their systems work. Accordingly, in December, 2005, OCC announced an extension of the mandated conversion date to September 29, 2006.

After the mandated conversion date, OCC will continue to support the legacy data service distribution system. However, for subscribers that do not meet the revised conversion date of September 29, 2006, OCC proposes to charge a monthly surcharge of $1,000 per month in order to reasonably allocate the costs of continuing to support the legacy data distribution system. The surcharge will be imposed starting with the October, 2006, billing cycle and will continue until the subscriber converts to the new DDS format and ceases to receive any legacy data service distribution transmissions.

By a separate proposed rule change, File No. SR–OCC–2006–06, OCC is similarly proposing to apply the $1,000 per month surcharge to clearing member subscribers to DDS that likewise fail to convert to the new format. If this filing, which is to implement the surcharge for

[1] 15 U.S.C. 78s(b)(1).

[2] The Commission has modified the text of the summaries prepared by OCC.

[3] For a description of the services, including DDS, offered through OCC's ancillary services program, see Securities Exchange Act File Nos. 53400 (March 2, 2006), 71 FR 12226 (March 9, 2006) [File No. SR–OCC–2006–01] and 52125 (July 26, 2005), 70 FR 44414 (August 2, 2005) [File No. SR–OCC–2005–09].

[4] By a separate proposed rule change, OCC will apply the same surcharge to clearing member DDS subscribers that likewise do not convert to the new DDS format by the mandated date. File No. SR–OCC–2006–06.

[5] ENCORE is OCC's clearing system.

non-clearing member subscribers, is not approved by the Commission by October, 2006, OCC will defer implementing the surcharge to clearing members until the Commission has approved this filing.[6]

OCC believes that the proposed change is consistent with Section 17A of the Act, as amended, because it involves a fee, due or charge applicable to non-clearing member subscribers of DDS that provides for the reasonable allocation of costs to support a legacy system. The proposed rule change is not inconsistent with the existing rules of OCC, including any other rules proposed to be amended.

(B) Self-Regulatory Organization's Statement on Burden on Competition

OCC does not believe that the proposed rule change would impose any burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were not and are not intended to be solicited with respect to the proposed rule change and none have been received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within thirty-five days of the date of publication of this notice in the **Federal Register** or within such longer period: (i) As the Commission may designate up to ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding; or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*) or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–OCC–2006–07 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–OCC–2006–07. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 100 F Street, NE., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of OCC and on OCC's Web site at *http://www.optionsclearing.com.* All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–OCC–2006–07 and should be submitted on or before July 31, 2006.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[7]

Nancy M. Morris,

Secretary.

[FR Doc. E6–10720 Filed 7–7–06; 8:45 am]

BILLING CODE 8010–01–P

[6] OCC's amended Schedule of Fees is attached to the proposed rule filing.

[7] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–54059; File No. SR–OCC–2006–06]

Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to a Surcharge for Clearing Member Subscribers That Have Not Met the Mandated Conversion Date for Data Distribution Service

June 28, 2006.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on May 15, 2006, The Options Clearing Corporation (''OCC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change described in Items I, II, and III below, which items have been prepared primarily by OCC. OCC filed the proposed rule change pursuant to section 19(b)(3)(A)(ii) of the Act [2] and Rule 19b–4(f)(2) thereunder [3] so that the proposal was effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested parties.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change would implement a surcharge to the monthly ancillary service fee for clearing member subscribers that have not converted to the new Data Distribution Service (''DDS'') format by the revised mandated conversion date of September 29, 2006.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, OCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. OCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements. [4]

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78s(b)(3)(A)(ii).

[3] 17 CFR 240.19b–4(f)(2).

[4] The Commission has modified the text of the summaries prepared by OCC.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The proposed rule change would implement a surcharge to the monthly ancillary service fee for clearing member subscribers that have not converted to the new DDS [5] format by the revised mandated conversion date of September 29, 2006. [6]

Background

Both clearing members and non-clearing members may subscribe to DDS. A clearing member may subscribe to DDS in order to receive in a machine readable format data processed by OCC that is proprietary to such clearing member (*e.g.*, position and post-trade entries) as well as non-proprietary data (*i.e.*, data not specific to the clearing member) produced by OCC (*e.g.*, options, series and prices). Non-clearing members may subscribe to DDS in order to receive certain non-proprietary data.

Discussion

In December, 2004, OCC informed all DDS subscribers that OCC was requiring them to convert to the new ENCORE [7] DDS format by February 28, 2006. Although OCC diligently worked with subscribers to facilitate their implementation of the new DDS format, it became apparent that subscribers needed additional time in order to complete their systems work. Accordingly, in December, 2005, OCC announced an extension of the mandated conversion date to September 29, 2006.

After the mandated conversion date, OCC will continue to support the legacy data service distribution system. However, for subscribers that do not meet the revised conversion date of September 29, 2006, OCC proposes to charge a monthly surcharge of $1,000 per month in order to reasonably allocate the costs of continuing to support the legacy data distribution system. The surcharge will be imposed starting with the October, 2006, billing cycle and will continue until the subscriber converts to the new DDS format and ceases to receive any legacy data service distribution transmissions.

By a separate proposed rule change, File No. SR–OCC–2006–07, OCC is similarly proposing to apply the $1,000 per month surcharge to non-clearing member subscribers to DDS that likewise fail to convert to the new format. If that filing is not approved by the Commission by October, 2006, OCC will defer implementing the surcharge to clearing members until the Commission has approved File No. SR–OCC–2006–07. [8]

OCC believes that the proposed change is consistent with section 17A of the Act, as amended, because it involves a fee, due, or charge applicable to clearing member subscribers of DDS that provides for the reasonable allocation of costs to support a legacy system. The proposed rule change is not inconsistent with the existing rules of OCC, including any other rules proposed to be amended.

(B) Self-Regulatory Organization's Statement on Burden on Competition

OCC does not believe that the proposed rule change would impose any burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were not and are not intended to be solicited with respect to the proposed rule change, and none have been received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective upon filing pursuant to section 19(b)(3)(A)(ii) of the Act [9] and Rule 19b–4(f)(2) [10] thereunder because the proposed rule establishes or changes a due, fee, or other charge. At any time within sixty days of the filing of such rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*) or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–OCC–2006–06 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–OCC–2006–06. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 100 F Street, NE., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of OCC and on OCC's Web site at *http://www.optionsclearing.com.* All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–OCC–2006–06 and should be submitted on or before July 31, 2006.

For the Commission by the Division of Market Regulation, pursuant to delegated authority. [11]

Nancy M. Morris,

Secretary.

[FR Doc. E6–10722 Filed 7–7–06; 8:45 am]

BILLING CODE 8010–01–P

[5] For a description of the services, including DDS, offered through OCC's ancillary services program, see Securities Exchange Act File Nos. 53400 (March 2, 2006), 71 FR 12226 (March 9, 2006) [File No. SR–OCC–2006–01] and 52125 (July 26, 2005), 70 FR 44414 (August 2, 2005) [File No. SR–OCC–2005–09].

[6] By a separate proposed rule change, OCC will apply the same surcharge to non-clearing member DDS subscribers that likewise do not convert to the new DSS format by the mandated date. File No. SR–OCC–2006–07.

[7] ENCORE is OCC's clearing system.

[8] OCC's amended Schedule of Fees is attached to the proposed rule filing.

[9] 15 U.S.C. 78s(b)(3)(A)(i).

[10] 17 CFR 240.19b–4(f)(1).

[11] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Draft Environmental Impact Statement: Pulaski and Laurel Counties, KY

AGENCY: Federal Highway Administration (FHWA), USDOT.

ACTION: Notice of Availability (NOA).

SUMMARY: This announces the availability of the Draft Environmental Impact Statement (DEIS) for the proposed interstate facility in the south-central portion of Kentucky, between the Somerset Northern Bypass (I–66) and London, KY. In accordance with the National Environmental Policy Act of 1969 (NEPA), this DEIS examines the potential social, economic, and environmental impacts of the proposed build alternatives and includes the no-build alternative.

FOR FURTHER INFORMATION CONTACT: Ms. Mary Murray, Transportation Engineer/Project Manager, Federal Highway Administration, 330 West Broadway, Frankfort, Kentucky 40601, (502) 223–6745, by e-mail to *Mary.Murrary@fhwa.dot.gov*; or Mr. Joe Cox, Kentucky Transportation Cabinet (KYTC), District 8, PO Box 780, Somerset, KY 42501, by e-mail to *Joe.Cox@kt.gov*, by fax to (606) 677–4013.

SUPPLEMENTARY INFORMATION:

Background

The Transamerica Transportation Corridor (I–66) was defined in an Interstate 66 Feasibility Study. This study focused on the feasibility of various alternative transportation concepts. The report recognized that further analyses could find that some individual segments of the Transamerica Transportation Corridor would be more feasible than others and would be more desirable from a State or regional perspective. The Interstate 66 Feasibility Study was funded through the 1991 U.S. Department of Transportation Appropriation Act.

The Transamerica Transportation Corridor extended from the East Coast to the West Coast, and was generally located between I–70 and I–40. It included a ''Southern Kentucky Corridor'' centered on the cities of Pikeville, Jenkins, Hazard, London, Somerset, Columbia, Bowling Green, Hopkinsville, Benton and Paducah.

The Southern Kentucky Corridor, Economic Justification & Financial Feasibility Study, May 1997, followed the Interstate 66 Feasibility Study. This study included public participation through an advisory committee, public meetings, press releases, and newsletters sent to all parties who expressed an interest in the Southern Kentucky Corridor. The study identified the Somerset to London segment of the proposed I–66 Southern Kentucky Corridor as a high priority segment.

In June 2000, the I–66 Southern Kentucky Corridor Scoping Study (Pulaski and Laurel Counties, KY) was completed. The document developed an environmental footprint, gathered resources agency and public input, and identified areas of concern, as well as the potential benefits of an interstate facility within the Southern Kentucky Corridor.

The Federal Highway Administration issued a Notice of Intent to prepare an Environmental Impact Statement for the segment of I–66 between Somerset and London, Kentucky, on April 29, 2002 [FR Doc. 02–10410].

This DEIS addresses the direct, indirect, and cumulative impacts from the proposed project on the natural and human environments. Six Pulaski County and five Laurel County alternatives were analyzed in detail. The DEIS addresses impacts from each of the interstate build alternatives and, in addition, discusses the no-build alternative.

Public involvement was integral throughout the development of the DEIS. Nine Citizens Advisory Group meetings were held with members representing the concerns of Businesses, Economic Development, Communities, and the Environment, in order to solicit input and provide project development information prior to the publication of the DEIS. Additional public involvement included public meetings, project newsletters, press releases, and Section 106 consulting party meetings.

Resource agencies were consulted and invited to comment during resource agency meetings held on December 14, 1999, March 14, 2000, and July 10–11, 2003.

A public hearing Pulaski and Laurel counties will be held in August, 2006. Public notice will be given of the time and place of the hearings. All comments on the DEIS are to be sent to the Federal Highway Administration, KY Division Office, 330 W. Broadway Street, Frankfort, Kentucky 40601 (Attn: Jose Sepulveda).

Electronic Access

A copy of the DEIS has been sent to affected Federal, State and local agencies and made available for public review. In addition, the document will be available electronically on the following Web site: *http://www.interstate66.com*

An electronic copy of this NOA may be downloaded from the Office of the Federal Register's home page at *http://www.archives.gov/federal-register* and the Government Printing Office's Web page at *http://www.gpoaccess.gov/fr/index.html.*

(Catalogue of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program) (23 U.S.C. 315; 49 CFR 1.48)

Dated: June 29, 2006.

Jose Sepulveda,

Kentucky Division Administrator.

[FR Doc. 06–6057 Filed 7–7–06; 8:45 am]

BILLING CODE 4910–22–M

Federal Register

Monday,
July 10, 2006

Part II

Postal Service

39 CFR Part 111

Electronic Verification System (eVS) for Parcel Select Mailings; Final Rule

POSTAL SERVICE

39 CFR Part 111

Electronic Verification System (eVS) for Parcel Select Mailings

AGENCY: United States Postal Service.

ACTION: Final rule.

SUMMARY: This final rule sets forth the standards that will be adopted by the Postal Service™ to implement the electronic data and automated processes of the Electronic Verification System (eVS) for permit imprint Parcel Select® manifest mailings and eliminate current paper-driven and manual processes used for such mailings. This required change will also extend to Standard Mail® machinable parcels and parcels from other Package Services subclasses (Bound Printed Matter, Library Mail, or Media Mail®) that are authorized to be commingled with permit imprint Parcel Select parcels.

DATES: *Effective Date:* This final rule takes effect August 1, 2007.

FOR FURTHER INFORMATION CONTACT: John F. Gullo, Manager, Business Mailer Support, via e-mail at *john.f.gullo@usps.gov* or by telephone at (202) 268–8057; or Neil Berger, Program Manager, Business Mailer Support, via e-mail at *neil.h.berger@usps.gov* or by telephone at (202) 268–7267.

SUPPLEMENTARY INFORMATION: On November 7, 2005, the Postal Service published a proposed rule in the **Federal Register** (70 FR 67399–67405), soliciting comments from mailers and parcel shippers on requiring the use of the Electronic Verification System (eVS) for all permit imprint Parcel Select mailings, including those containing authorized commingled Standard Mail machinable parcels and parcels from the other subclasses of Package Services (Bound Printed Matter, Media Mail, and Library Mail).

The Postal Service received comments from two individual parcel shippers, one parcel trade association representing parcel mailers and shippers, and one organization representing the full range of mailers and shippers preparing letters, flats, or parcels. Responses to the comments from these shippers and organizations appear in section A, *Public Comments and Postal Service Responses*.

Detailed information about eVS appears in section B, *eVS Background and Overview*. Implementing *Domestic Mail Manual* mailing standards appear after section B. In those standards, the term *mailer* also implies *shipper* or *parcel consolidator* who provides a variety of parcel mailing services.

Section A. Public Comments and Postal Service Responses

The public comments received from the two parcel shippers and two mailing organizations can be grouped into the following five areas of concern:

1. Label markings (barcodes and indicia).
2. Postage adjustments and Postal Service sampling.
3. Mailer and shipper quality control responsibilities.
4. ''Start-the-clock'' confirmation at time of induction.
5. Mandatory implementation and scope of eVS.

1. Label Markings (Barcodes and Indicia)

a. Barcode Size

Comment: Two commenters cited potential problems with the size of the UCC/EAN 128 format barcode required for eVS—either the 30-character concatenated barcode (which contains the destination ZIP Code , also called the postal routing code) or the 22-character barcode (which does not contain the destination ZIP Code)—positioned on the mailing label as described in Publication 205, *Electronic Verification System Technical Guide*.

The commenters noted that the surface area of the address side found on some parcels, especially lightweight machinable Standard Mail or Media Mail parcels, is too small to accommodate both the required barcode and all other necessary addressing information, postage indicia, and any internal inventory barcodes or processing codes. The size of standard window envelopes also presents similar problems. Some parcel mailers and shippers affix window envelopes in place of mailing labels to outgoing parcels. These envelopes frequently contain packing slips, statements of account, or invoices. The delivery address may be printed on a shipping slip, statement of account, or invoice in the envelope. Many of the window envelopes used for these purposes cannot completely display the barcode types required for eVS along with the required delivery address information.

These same commenters pointed out that the smaller size parcels that could be commingled with Parcel Select mailings if authorized are frequently machinable Standard Mail or Media Mail parcels. As one of these commenters mentioned, if these smaller parcels cannot be included with eVS Parcel Select mailings, the mailer or shipper and the Postal Service incur additional handling costs for separate mailings with separate manifests.

Response: The Postal Service recognizes that most parcel mailers and shippers use standard-size labels in their automated production processes. One of the most commonly used sizes throughout the shipping industry measures 4 inches wide by 6¼ inches high, a size with sufficient space to contain the barcode required for eVS, addressing information, and postage information in the permit imprint indicia. For small parcels that cannot accommodate this size mailing label on the address side of the parcel, mailers and shippers can decrease the size of the label as long as all required postal information is included. Mailers can use smaller barcode formats for internal information or place internal barcodes on a different side of the parcel.

For mailers and shippers wanting to use window envelopes on the outside of parcels, large clear pouches are available that can be affixed for holding various types of packing slips that serve as the mailing label with the delivery address information and required barcodes. These pouches, which come in several standard sizes, are an effective substitute for window envelopes. The most common pouches have clear plastic fronts and adhesive backing on either opaque or clear plastic backs.

In today's automated processing environment, the current size of the barcode required for eVS, which is based on the Delivery Confirmation™ barcode specifications, remains critical to ensure accurate scanning across many processing platforms and in multiple delivery situations. Current testing and certification used by the Postal Service evolved from engineering studies of barcode configurations and industry standards. It should be noted that barcodes used by other parcel carriers tend to be the same size or longer and taller than the concatenated barcode.

The longer concatenated barcode is the preferred barcode because it contains the delivery address ZIP Code, serves as the basis for Confirmation Services scanning information, and promotes mail processing efficiencies with automation equipment. Use of this longer barcode with the ZIP Code also allows the mailer or shipper to benefit from the parcel barcode discount without needing to print an additional ZIP Code barcode (postal routing barcode) elsewhere on the label. Moreover, this barcode allows the use of Delivery Confirmation for Parcel Select and Priority Mail at no additional fee for electronically manifested information.

The mailing industry and the Postal Service determined together that the UCC/EAN 128 barcode format was

optimal for parcels and added this barcode symbology as an option for parcels as published on July 14, 1998, in the **Federal Register** (63 FR 37947), with an original mandatory use in 2004. This barcode symbology was selected for three major advantages:

- First, this format is one of the most complete, alphanumeric, one-dimensional symbologies currently available. The use of three different characters (A, B, and C) facilitates the encoding of the full 128 ASCII character set.
- Second, code 128 is one of the most compact linear barcode symbologies currently available. For example, the Code 128 symbology length is much shorter than Code 39. Character set C enables numeric data to be represented in a double density mode. Here, two digits are presented by only one symbol character saving valuable space. This format allows concatenation to combine multiple application identifiers (AIs).
- Third, code 128 symbols use two independent self-checking features that improve printing and scanning reliability.

b. Barcode Print Medium

Comment: One commenter mentioned that inkjet printing, which can print information at high speeds on mailing labels and produce POSTNET barcodes and related PLANET Codes and the 4-state customer barcode, cannot print the required UCC/EAN 128 barcodes. This commenter believes that eVS should allow an alternative barcode that can be printed by inkjet printers at production speeds.

Response: The Postal Service and the parcel shipping industry worked together to evaluate and agree on the most widely used barcode technology in the late 1990s, specifically for Delivery Confirmation and parcel mail. Industry standards for this barcode are specified in the American National Standards Institute (ANSI) X3.182–1990 *Bar Code Print Quality Guideline*. Following these standards ensures a consistently high read rate for successful barcode scanning at all stages in mail processing and delivery.

Processing equipment used by the parcel industry and the Postal Service support the technology behind the currently required parcel barcode. The Postal Service in cooperation with the parcel industry will continue to explore new barcode technologies and printing options as they become available to respond to a wide range of mailer operations.

c. Unique Period for Barcode Use

Comment: Two commenters believed that the current requirement that the barcode required for eVS (which contains the package identification code) may not be reused for 12 consecutive months will limit the flexibility of mailers and shippers to assign tracking numbers. These commenters stated that Postal Service non-eVS manifesting rules require that the package identification code remain unique for no more than 90 days.

Response: The 90-day period mentioned by the commenters refers to the retention of the actual manifest documents, not to the identification numbers. That document retention period applies to standard manifest systems as well as eVS.

Manifesting rules in Postal Service Publication 401, *Guide to the Manifest Mailing System,* require only a unique identification (ID) number—not necessarily a package identification code as used in eVS—within a given mailing represented by the manifest. For non-eVS manifests, the ID number, whether a computer-generated number, product number, or any other number, may be reused for every mailing represented by a separate manifest. In the eVS environment, data for the package identification codes, which are required as specified in Postal Service Publication 205, is electronically stored for 12 months to support any mailer or shipper claims filed for extra services such as insurance or any research for postage reconciliations.

As information, the 22-digit numeric package identification code (PIC) corresponding to the 22-character barcode is composed of several required elements, including an 8-digit number called the Sequential Package Identifier. The entire 22-digit PIC currently must remain unique for 12 consecutive months from the date of first use. Because digits 0 through 9 may be used in each of the eight positions of the Sequential Package Identifier, a mailer or shipper actually has a total of 100,000,000 unique combinations available for one year just from that identifier. An eVS mailer or shipper can expand this number of unique combinations by increasing the number of nine-digit customer identification numbers used.

In view of the comments from parcel mailers and shippers and their need for greater flexibility to meet various business applications, the Postal Service has begun studying how to change the current requirements for unique PICs from 12 months to 6 months. The business rule on maintaining a unique PIC would still be set at the point when the Postal Service receives the electronic file.

Changes to the current 12-month period will require systems development and testing to ensure that mailer and shipper business requirements and Postal Service operational needs are both met. The Postal Service believes that it could implement this change as early as June 1, 2007. As the Postal Service works on developing its system requirements for this change, it will continue working with the mailing industry to ensure that their various business needs are met.

d. Rate Marking

Comment: Two commenters believed that the Postal Service should revise its policy in regard to actual postage payment and the corresponding rate marking in the permit imprint indicia for parcels mailed under eVS. These commenters proposed the development of a standard eVS marking for permit imprint indicia that could be used on all eVS parcels regardless of mail classification. Establishing such an indicia would eliminate postage adjustments for ''cross-over'' parcels for which the correct postage rate is paid but the marking in the indicia is incorrect because it still reflects the original classification under which the parcel was rated.

For example, a mailer may rate and mark a parcel that weighs nearly 16 ounces as Standard Mail before handing off the parcel to a parcel shipper or consolidator. When the shipper or consolidator handling the parcel weighs the parcel, the actual weight is reported at more than 1 pound, making the parcel ineligible to be mailed at Standard Mail rates. The consolidator manifests the parcel at the appropriate Parcel Select rate to pay the correct postage but does not remark the parcel. If the parcel is sampled by the Postal Service, one commenter believed that it would result in a penalty in the calculation of the postage adjustment factor (as described in section B).

Both commenters believed that the emphasis in the eVS environment should be on the correct payment of postage. These commenters believed that a general eVS marking would solve this issue and provide parcel mailers and shippers the necessary flexibility to correct rate payments without the burden of remarking the parcels.

Response: Use of the correct rate and class markings on all mailpieces is the only way to ensure that the Postal Service can provide the appropriate service for mailpieces. Equally important, such markings also indicate

content eligibility and provide information needed for statistical sampling done on all classes of mail to develop costing data used in the ratemaking process. In the case of the commenter's example about Standard Mail and Parcel Select, the Postal Service would like to point out that there are not only differences in rates, weight maximums, and available destination entry facilities for Standard Mail and Parcel Select as the commenter mentions, but there are also differences in how such mail is handled for service standards, for forwarding or return, and for eligibility for extra services.

The occasional need to change rate markings on mailpieces already prepared is not exclusive to parcel mail handled by consolidators. Mailers or mailing service providers preparing letter-size mail may wish to change the classification of advertising mail from Standard Mail to First-Class Mail® to meet a tight deadline. In that case, the mailer or mailing service provider would need to obliterate and remark the pieces as First-Class Mail or overlabel the indicia with an indicia marked First-Class Mail. In another case, mailers or shippers handling order fulfillment may need to change the classification of a parcel from Parcel Select to Priority Mail® to expedite a late shipment to the consumer ordering the merchandise. The mailer or shipper would need to decide at the time the label is printed to avoid overlabeling. A parcel mailer or shipper needing to reclassify a Standard Mail parcel as a Parcel Select parcel would need to take the same action and remark the parcel or make the decision at the point the label is produced.

Preparing and marking the Standard Mail parcel weighing over the maximum permitted weight as Parcel Select resolves this problem. Postal Service classification allows Standard Mail to be reclassified easily as Parcel Post® because there are no minimum weight restrictions on Parcel Post and the content requirements are the same. As mentioned previously, there are service differences in handling and delivery between the two classes. What the commenter discusses is actually related more to weight than to classification and can be readily resolved by remarking the piece and converting it to Parcel Select. The Postal Service continues to require all mailpieces to bear the appropriate class and rate markings in order to provide the service requested by the mailer or shipper and expected by the consumer.

The commenter asked for confirmation on how the Postal Service would rate the Standard Mail parcel in his example. The Postal Service sampler would identify the piece as Standard Mail from the class marking in the permit imprint indicia and weigh the piece. The sampling software would then determine that the weight of the sample exceeds the maximum weight permitted for Standard Mail and prompt the sampler to confirm that the correct mail class had been selected. The sample data would then be uploaded to eVS with the parcel characteristics collected by the sampler. The sample data would be reconciled with the manifest data prepared by the mailer or shipper at the appropriate Parcel Select rate.

2. Postage Adjustments and Postal Service Sampling

a. Creation of Multiple Accounts

Comment: Two commenters requested clarification about the ability to create multiple eVS accounts per mailer or shipper.

Response: An eVS mailer or shipper may not use more than one permit number for having postage payment withdrawals made from a single financial account. If an eVS mailer or shipper wishes to use two or more permit numbers, the mailer or shipper must establish a separate financial account with the Postal Service for each permit number referenced in their permit indicia.

Currently, eVS participants have obtained multiple location-related identification numbers from the Postal Service, rather than setting up separate profiles with separate debit accounts and permit numbers. These eVS participants have linked these multiple identification numbers to the mailer ID and permit number in order to handle various client relationships and internal accounting arrangements. This approach has given these eVS mailers and shippers the flexibility to identify clients for billing as well as for handling internal business within the mailer's or shipper's operations such as distribution centers or regional plants.

b. Sampling Procedures and Postage Adjustments

Comment: One of the commenters presented several concerns about the proposed sampling methods and postage adjustment process. First, the commenter believed that postage adjustments collected under eVS for actual mailer or shipper errors should be cost-based and specific rather than averaged and automatic. This commenter noted that although penalties against chronic offenders might be warranted, penalties should not be automatic for mailers and shippers who have a record of accurate postage payment when an issue temporarily occurs at a single destination facility or with a single mailing.

Second, the commenter expressed concern about the Postal Service proposal to take samples of individual mailings at each plant and delivery unit. This commenter believed that it appeared extreme to impose a penalty of a percentage of postage paid for an entire mailing period of one month if discrepancies between the Postal Service and mailer or shipper information could be isolated to a particular mailing, plant, or delivery unit.

Third, the commenter believed that, despite the two 10-day review periods provided following the end of the mailing month in question to reconcile differences for postage adjustments, there appeared to be no satisfactory resolution to these adjustments because Postal Service claims of the character and weight of a particular sampled parcel or shipment cannot be verified by the mailer or shipper after sampling had been done and the data entered.

Response: The Postal Service developed eVS at the request of the parcel shipping industry to provide mailers and shippers greater operational flexibility by moving the verification process from an origin-based system to a destination-based system. eVS is based upon the mailer's or shipper's complete system of mailing processes, and mailer or shipper quality controls are expected to extend across all steps in these processes. This arrangement results in an accurate reflection of the mailer's or shipper's efficiencies throughout the mailing process. Postage sampling—only one element of quality verification—does not penalize; rather, the postage adjustment represents actual postage due versus what the mailer or shipper originally projected for the entire mailing volume.

eVS introduced three fundamental modifications to current acceptance and verification processes:

- How postage is to be paid. Postage is paid by the transmission of an electronic manifest and the automatic generation of postage statements and automatic withdrawals from the eVS mailer's or shipper's *PostalOne!* payment account.
- Where and how verifications are to take place. Sampling mail at destination is the cornerstone for eVS verification of correct postage payment.
- Use of a Postal Service accounting period (a calendar month), rather than individual mailings, as the basis for calculating any postage adjustments.

In response to the commenter's first concern that postage adjustments should be cost-based for specific mailings rather than averaged over an entire mailing month, the Postal Service wishes to point out that sampling to verify postage payment is a fundamental process used for permit imprint mailings, whether the sampling is done at origin or, in the case of eVS, at destination. When sampling is done at origin, an individual mailing is identifiable and samples can be taken from that particular mailing. If additional postage is needed, then only that mailing is involved. When sampling is done at destination facilities for eVS, parcels from different mailings are sampled each day at multiple sites. In this case, if additional postage is needed, it is not practical for the Postal Service to adjust payment for an individual mailing. Using data from parcels sampled over the entire month minimizes the effects of incorrectly rated parcels in a single mailing for the mailer or shipper. During this monthly period, mailers and shippers receive data that allows them to adjust their focus on specific facilities and processes that are falling below the established quality levels in their service agreements.

In response to the second concern about imposing a ''penalty'' of a percentage of postage paid for an entire mailing period of one month, the Postal Service wishes to state that it already allows a tolerance up to 1.5% in the underpayment of postage for any mailing. Furthermore, the Postal Service wishes to clarify that there is no penalty or added charge; what the commenter terms ''penalty'' is actual postage owed for pieces mailed.

For mailers and shippers with well executed quality control procedures and an established record of accurate postage payment, the postage adjustment factor (PAF) for their monthly mailings is 1.015 or below (representing underpayment of 1.5% or less). If the Postal Service moved to a purely cost-based system of adjustments for eVS, then there would be no tolerance for any underpayment of postage and the systems requirements and data processing for eVS would need to become so sophisticated that most mailers and shippers, especially consolidators receiving electronic files from clients, would find both the technology requirements and the administrative costs burdensome and challenging.

In response to the third concern about reviews and appeals, the Postal Service believes providing 20 days gives both the mailer or shipper and the Postal Service sufficient time to reconcile any potential differences. If the results from the monthly sampling indicate total postage for the sampled parcels is understated by more than 1.5% (that is, the PAF is greater than 1.015), the Postal Service adjusts the total postage for the month at the end of the 20-day reconciliation period.

Any eVS mailer or shipper may pursue the written appeals process as presented in *Domestic Mail Manual* 604.10.0 for postage refunds. The Postal Service will make a decision on the validity of a postage refund request or postage payment adjustment regarding the overpayment or underpayment, provided sufficient written documentation is included with the appeal.

c. Mis-Shipped BMC Parcels

Comment: One commenter stated that it is impossible to eliminate all mis-shipped parcels from being included with DBMC rate mailings because scanning devices used by the commenter's own carriers misread a certain percentage of barcodes before the parcels are presented to the Postal Service. As a consequence, this commenter believed that mis-shipped parcels received at bulk mail centers and sampled by the Postal Service should not be included in the postage adjustment factor (PAF). Instead, the commenter proposed that a mis-shipped DBMC parcel be charged the inter-BMC Parcel Post rate less the paid DBMC rate already paid.

Response: The Postal Service wishes to note that all destination rates require entry of the mail at the correct designated facility. Any destination rate parcel entered at the wrong facility is incorrectly rated. For sampled mis-shipped parcels originally rated by the eVS mailer or shipper as DBMC rate and destination sectional center facility (DSCF) rate, the Postal Service rates the parcels at the appropriate inter-BMC rate for mis-shipped DBMC parcels and intra-BMC or inter-BMC rate for mis-shipped DSCF parcels.

Random sampling is the only technique currently available for identifying DBMC and DSCF parcels mis-shipped by the eVS mailer or shipper. In contrast, both random sampling and Postal Service carrier scanning (for all parcels bearing Confirmation Services) are techniques available for identifying destinating delivery unit (DDU) parcels mis-shipped by the eVS mailer or shipper. As a result, nearly all mis-shipped DDU parcels can be identified and are therefore not included as part of the PAF. Currently, eVS mailers and shippers must pick up mis-shipped DDU parcels. In the future, the Postal Service will handle these parcels and charge the appropriate additional postage.

d. Calculation of Postage for Mis-Shipped DDU Standard Mail Parcels

Comment: One commenter requested clarification on how eVS calculates the additional postage required for mis-shipped Standard Mail DDU parcels. With the absence of a single-piece rate for Standard Mail, the commenter believed such parcels should be charged either an appropriate First-Class Mail single-piece rate or Parcel Post single-piece rate, based on the weight of the parcels.

Response: Just to clarify, DDU rates are not currently available for Standard Mail parcels. However, to achieve improved delivery, mailers and shippers may be authorized to commingle Standard Mail parcels with Parcel Select parcels claimed at DDU rates and entered at DDUs. For mis-shipped Standard Mail parcels in this situation, the Postal Service does indeed charge the rates cited by the commenter. Under eVS, Standard Mail parcels will be charged either an appropriate First-Class Mail single-piece rate or Parcel Post single-piece rate, based on the weight of the parcel and whichever rate is the lower rate. Because of the Standard Mail marking in the postage indicia, these pieces will still be handled like Standard Mail parcels in terms of delivery service and any forwarding or return service indicated by ancillary service endorsements.

e. Postage Adjustment Reviews

Comment: Three of the four commenters voiced the following concerns about changes in current sampling methodology that will occur for eVS mailings due to the replacement of origin sampling with destination sampling:

- *Rework option.* eVS mailers and shippers lack the option to rework mail as currently permitted for mail subject to origin sampling and verification.
- *Sample parcel discrepancy resolution.* eVS mailers and shippers lack any real ability to dispute destination sampling results because the physical pieces will have been delivered, leaving only data to resolve discrepancies.
- *Automated postage adjustment withdrawals.* eVS mailers and shippers lack a way to stop automatic postage adjustments calculated through sampling and withdrawn from their debit account established with the Postal Service before the mailer or

shipper even agrees with the adjustment. Two of these commenters recommended that, in view of these methodology changes, the Postal Service develop system functionalities for each eVS customer profile that would allow an eVS mailer or shipper to set a threshold—either a dollar amount or a percentage of total postage for the month—above which the Postal Service would be required to obtain authorization from the mailer or shipper.

• *Reduction in PAF.* Additionally, one commenter recommended that the Postal Service should implement a program to monitor its sampling accuracy and include a provision that would numerically increase the postage adjustment factor (PAF) threshold from 1.015 if the Postal Service sampling accuracy or sampling size fell below a specified level.

• *Optional procedures.* eVS mailers and shippers lack any alternative to eVS such as using optional procedure mailing systems. At a minimum, this commenter believed that the Postal Service should still honor and renew existing optional procedure mailing systems with individual parcel mailers or shippers.

Response: The eVS requirements and processes presented in this final rule represent the outcome of more than three years of collaborative work between the parcel shipping industry and the Postal Service in the concept and design of this postage payment system. The use of destination sampling as a verification tool constitutes the foundation of eVS and provides parcel mailers and shippers with the greatest flexibility and freedom in managing their internal controls, modifying their operational processes, and improving their customer service. At the same time, eVS processes streamline nearly every step in the postage payment process and the reconciliation of mailings with that payment process. The Postal Service believes that these mailer and shipper benefits outweigh the limited option to rework mailings, an option that most mailers and shippers under tight fulfillment schedules and customer deadlines do not currently exercise.

In regard to the second point concerning discrepancies between manifested information for a particular parcel and information derived from the actual weighing and rating of the parcel as a sample, the Postal Service notes that most discrepancies found are due to incorrectly weighed pieces, incorrectly input rates, and incorrectly input destination ZIP Codes. All three of these discrepancies can result in postage differences. At the same time, they indicate that the mailer or shipper preparing the manifest files needs to improve quality control processes to eliminate such errors.

Postal Service employees responsible for sampling parcels are highly trained in all areas affecting sampling such as the correct procedures for classifying mail, proper handling of the sampling devices and scales, uploading sampling data, and prompt return of the sampled mailpieces to the mailstream. Postal Service employees responsible for sampling at DDUs report to the managers of Statistical Programs and handle a wide range of other programs requiring similar knowledge and skills, including the Origin-Destination Information System—Domestic Revenue, Pieces, and Weight System (ODIS–RPW) used to estimate revenue, volume flow, weight, and performance measurement for the Postal Service. This data is used to develop proposals for new rates, assist in budget preparation, conduct management studies, and support management decisions concerning mail flow and service performance in transportation and operations.

Postal Service employees responsible for sampling at DBMCs and DSCFs are included in the reporting structure of the manager of Business Mail Entry. These employees are trained to handle sampling and verification not only for eVS but for all other types and classes of mailings, including origin verification at mailers' and shippers' plants and at business mail entry offices. So while it is true, as the commenter notes, that mailers and shippers are not able to dispute the sample results due to the nature of the sampling process and the need to get the sampled mail back into the mailstream, the data will be collected by well-trained Postal Service employees and is expected to be accurate.

In regard to the third point about automatic withdrawals of postage adjustments, the adjustment process for current eVS customers is handled manually through e-mail communications between the customers and the Postal Service. With a small number of customers, this approach presents few administrative burdens. With a large number of customers, however, this approach would become inefficient for the eVS customers and the Postal Service. Automating the adjustment process would provide an appropriate level of efficiency and customer service. With proper observance of quality control procedures and processes, mailers and shippers would have few reasons to be concerned about automated postage adjustments because of the number of review processes in place with eVS.

During the 10-day reconciliation period following the month of mailing in question, the eVS mailer or shipper concerned about any specific adjustment or adjustment amount can submit a written appeal to the Postal Service under the standards in the *Domestic Mail Manual.* During the appeal process, the Postal Service will disable the automated adjustment feature as the eVS mailer or shipper and the Postal Service review and analyze the adjustment.

In regard to the fourth point, the Postal Service believes that the current PAF of 1.015 provides sufficient latitude for parcel mailers and shippers. As mentioned previously, Postal Service employees performing sampling are well trained and accurate. The Postal Service is working with these employees to increase the number of samples taken at BMCs, SCFs, and DDUs.

In regard to the fifth point, eVS manifest mailing system replaces all postage payment systems for permit imprint Parcel Select mailings, including optional procedures and alternate mailing systems (AMS). Mailers and shippers would be permitted to continue using such postage payment systems for parcel mailings except for permit imprint Parcel Select mailings or permit imprint Parcel Select mailings combined with other parcels. The Postal Service believes that once mailers and shippers begin using eVS, they will want to use this system for all parcels.

3. Mailer and Shipper Quality Control Responsibilities

Comment: Two commenters voiced concerns about mailer and shipper costs associated with the internal quality control requirements outlined in chapter 5 of Postal Service Publication 205, *Electronic Verification System Technical Guide:*

> Initially, the mailer must perform postage accuracy verifications on 0.5% of the parcels for each destination entry level (DBMC, DSCF, DDU) from each mailer facility * * *.
>
> The mailer must perform postage accuracy verifications on 0.5% of the parcels from each mailer facility for the first 30 days. After that, when mailings remain within the ±1.5% accuracy level, the percentage of parcels verified for each destination entry level can be reduced to 0.25%. If errors for any destination entry level exceed the ±1.5% difference, 0.5% of the parcels to that entry level must be sampled until the ±1.5% accuracy level is maintained for 30 days.

One commenter proposed amending the 0.25% to 0.1% of all parcels with

the view that the goal of eVS should be to reduce cost in mail verification for mailers and shippers as well as the Postal Service. This commenter stated that the initial costs incurred in establishing proper quality control procedures in order to comply with these requirements and the associated labor costs for these internal verifications performed by the mailer or shipper could be brought in line to meet the purpose of quality control by permitting this lower percentage.

The commenter stated that the Postal Service should work closely with interested parcel mailers and shippers to develop alternative procedures that still ensure proper postage payment at a lower cost to the mailers and shippers. In addition, the commenter suggested that the Postal Service may want to consider reducing the number of parcels that must be verified, especially for companies that consistently meet quality thresholds specified by the Postal Service.

Response: The Postal Service recognizes that there are many costs associated with implementing and maintaining a successful quality control program at any mailer's or shipper's production site. Unlike letter-size mail and flat-size mail—both of which tend to be predictable in production, scheduling, and quality—parcel mail generally does not have those characteristics of predictability. Parcel mail represents a form of mail driven by customer orders and fulfillment not by catalysts such as monthly invoicing, subscription services, or sales cycles for advertising campaigns. As a result, parcel mailings can vary greatly from day to day, whether for a parcel mailer or a parcel shipper consolidating parcels from several clients. In addition, because eVS relies solely on the accuracy of the manifest files submitted and the subsequent sampling done by the Postal Service at destination, the importance of quality control assumes an extremely critical role for the success of this electronic system.

The required sampling percentages are minimal to ensure that the parcel mailer or shipper using eVS prepares and reports accurate data for the Parcel Select mailings. Taken in perspective, the Postal Service notes that 0.5% represents only 5 parcels out of 1,000 parcels. If the mailer or shipper plans to deposit mail at several sites from several mailer or shipper plants, the number of parcels sampled still remains relatively small. At 0.25%, the mailer or shipper reduces the number of parcels sampled by one-half.

The Postal Service encourages the use of more quality control rather than less to validate processes and systems. However, the Postal Service also believes that mailers or shippers who demonstrate superior quality control procedures as benchmarked by the postage adjustment factor (PAF) should be rewarded for that performance. In response to these two commenters, the Postal Service will modify the business rules in Publication 205 for postage accuracy verifications for eVS mailers and shippers as follows:

> The mailer must perform postage accuracy verifications on 0.5% of the parcels from each mailer facility for the first 30 days. After that, when mailings remain within the ±1.5% accuracy level, the percentage of parcels verified from each destination entry level can be reduced to 0.25% for the next 60 days. After that 60-day period, the percentage of parcels verified from each destination entry level can be reduced to 0.10%. If any destination entry level exceeds the ±1.5% difference, 0.5% of the parcels to that entry level must be sampled until the ±1.5% accuracy level is maintained for 30 days, followed by 60 days at 0.25% and finally at 0.10%.

The Postal Service will continue to work with parcel mailers and parcel shippers on improving quality control procedures. An attachment to the service agreement references the following quality control processes that can be tailored to specific business and operational needs:

- *Quality control documentation*. Maintain and document quality control over all aspects of mail production and system processing environments. Documentation could be represented by a quality control manual or other work instructions and checklists that the Postal Service could audit if necessary.
- *Customer number maintenance process*. Ensure that all the shipper's clients are incorporated into the eVS data structure for proper identification and impact on postage payment.
- *Barcode read rate*. Document which quality control processes are used and which reports are generated to ensure accurate readability of barcode information on all parcels.
- *Insured parcels*. Have a process to validate that all insured parcels or collect-on-delivery parcels, whether claimed by the mailer or shipper or by clients of the mailer or shipper, are verified as being present within the mailing before including the mailer's or shipper's data or the clients' data within the electronic eVS manifest mailing. This data must be protected using detail record 2 format criteria as specified in Publication 205.
- *Sampling process*. Document the frequency of errors by using PS Form 8159 or a facsimile and provide an explanation of those errors and the corrective action taken for files accepted from clients. Have client-based quality control to ensure the proper rating of all material being entered by the client.
- *File upload process*. Ensure the proper upload of all electronic eVS manifest mailing data.
- *File return process*. Ensure that file error report data—such as the Product Tracking System Error/Warning report—returned from the Postal Service receives scrutiny, prompt correction, retransmission or other electronically documented reconciliation.
- *Monthly quality improvement effort*. Provide a corrective action report regarding action taken to improve quality if Postal Service sampling results indicate more than 1.5% error.
- *Delivery appointment quality measurement*. Arrive within one half hour of appointment schedules and provide, upon request by the Postal Service, electronic validation of monthly performance in meeting these appointment schedule times, as applicable to each destination delivery unit post office where mail is being deposited.

4. ''Start-the-Clock'' Confirmation at Time of Induction

Comment: Two commenters expressed concern about the elimination of the PS Form 8125, *Plant-Verified Drop Shipment (PVDS) Verification and Clearance*, that mailers or shippers currently use when they enter PVDS mailings at a destination facility. For the Postal Service, the form confirms that the mailing has already been verified by the Postal Service and may be accepted. For the mailer or shipper and the Postal Service, the form serves as the ''start-the-clock'' event for Parcel Select performance. The commenter proposed replacing the process of scanning the Form 8125 by requiring Postal Service destination facilities to scan five parcels from the shipment when received. The commenter requested that the Postal Service specify what will replace the PS Form 8125 barcode scan as proof of entry and ''start-the-clock.'' The commenter concluded that the Postal Service should commit to prompt verification and acceptance at destination facilities.

Response: The Postal Service and the parcel shipping industry worked together for the past three years to develop a postage payment system that eliminated reliance on paperwork, including PS Form 8125. With the proper reconciliation of data in the manifest files created and submitted by an eVS mailer or shipper, the Postal

Service does not require clearance documentation.

In response to the critical need, however, for eVS mailers and shippers to have confirmation that a shipment has been received, the Postal Service is in the process of considering new acceptance procedures for eVS mailings. These procedures would incorporate scanning a yet-to-be determined percentage of pieces in each Parcel Select destination entry mailing with the ''DC/eVS Arrive'' scan event. Further, the Postal Service is examining the appropriate system logic that would be used for this additional data collected on Parcel Select mailings to support service performance measurement, also a critical element for eVS mailers and shippers and for the Postal Service.

It is expected that the new procedures would provide a more efficient and effective means of entering Parcel Select mailings. Because this change would affect many mailers and shippers and Postal Service operations, considerable work with the mailing industry will be needed before final procedures are programmed and adopted.

5. Mandatory Implementation and Scope of eVS

Comment: One commenter stated that mailers or shippers with multiple facilities may need more than one year to test and implement eVS.

Response: The Postal Service believes that most mailers and shippers, even those with multiple facilities, will have little difficulty testing and implementing eVS within one year. Generally, parcel mailers and parcel shippers already manifesting parcel mailings have the electronic infrastructure and quality control processes needed for the implementation of eVS. Depending on the circumstances and proposed timelines of such multiple-site parcel mailers or parcel shippers, the Postal Service will consider possible extensions for full implementation of eVS at all sites.

Comment: One commenter stated that many mailers and shippers currently use their manifest systems to pay postage for all classes and subclasses of mail. This commenter noted that the proposed rule published on November 7, 2005, in the **Federal Register** applied only to Parcel Select mailings and to Parcel Select mailings authorized to contain machinable Standard Mail parcels and parcels from other Package Services subclasses (Bound Printed Matter, Media Mail, and Library Mail). This commenter recommended that eVS be made available for all classes of parcels.

Response: The Postal Service agrees with this commenter's recommendation and will extend the availability of eVS, but not its required use, to all classes of domestic mail, whether or not the parcels are included in a Parcel Select mailing. Currently, eVS may be used for Bound Printed Matter, Media Mail, and Regular Standard Mail. In addition, the Postal Service plans to extend eVS to permit imprint Priority Mail and First-Class Mail after it has developed origin verification processes by working with the parcel industry and Postal Service management responsible for acceptance procedures.

Comment: One commenter noted that the implementation of eVS requires considerable upfront costs. This commenter believed that such costs would reduce the value of eVS and possibly decrease the competitive position of the Postal Service as a parcel carrier. The commenter recommended that eVS should be made optional and that workshare discounts should be provided to eVS parcel mailers and shippers.

Response: The Postal Service believes that most parcel mailers and parcel shippers will experience limited costs in modifying their current production and information technology systems to accommodate eVS. In fact, many Parcel Select mailers and shippers already use manifesting systems and transmit Delivery Confirmation files. eVS uses the same information already created by these systems. This similarity helps minimize transition costs to eVS.

From a competitive standpoint, eVS offers significant benefits to parcel mailers and shippers. Mailers and shippers no longer have to wait for Postal Service verification, the parcel barcoding requirement provides greater specificity in accounting and postage, and the electronic manifests eliminate the need for most paper documentation. At the same time, eVS increases operational flexibility for participants, and streamlines most administrative processes for participants and the Postal Service.

The Postal Service and the parcel industry have worked many years to evolve a system that would modernize the handling and payment for parcel mail. The Postal Service believes that the eVS features and benefits will make parcel mail an attractive alternative for many customers.

The Postal Service wants to point out that postage worksharing activities generally require mailers and shippers to prepare, sort, or transport mail to qualify for reduced postage rates (''worksharing rates''). These reduced rates are based on the avoided costs estimated by the Postal Service as a result of worksharing activities done by the mailer or shipper. The key activities include (1) barcoding and preparing mail for Postal Service automated equipment; (2) presorting mail by ZIP Code or specific delivery location; and (3) entering mail at a Postal Service facility closer to the final destination of the mail.

The Postal Service notes that eVS is simply a more advanced manifest mailing system for permit imprint mail that reduces certain tasks for mailers and shippers. Under eVS, mailers and shippers are not assuming the performance of tasks generally done by the Postal Service, including verification of mail and monitoring mailer and shipper quality. Even though these tasks are simplified and greatly automated under eVS, they are still tasks that the Postal Service must perform to ensure that mailers and shippers can benefit from this program while protecting Postal Service revenue. So the traditional basis for worksharing is not present in eVS.

The net benefits of eVS would inevitably be passed on to the mailers and shippers by helping to mitigate increases in institutional costs for the Postal Service and costs directly associated with specific classes and subclasses of mail. At the same time, eVS would, in the long-term, reduce overall operational and administrative costs for mailers and shippers.

Comment: One commenter stated that mandating eVS might prevent mailers or shippers who cannot meet the requirements for this new system from using Parcel Select. This commenter also expressed concern about the intentions of the Postal Service to extend the use of eVS to all parcel mailings in the future, raising additional issues with the mailing industry.

Response: The Postal Service plans to make eVS available for all parcel-shaped mail, but it does not intend to mandate the use of eVS outside Parcel Select mailings without further experience and discussions with the parcel industry.

Section B. Background and Overview

The Postal Service has worked closely with the parcel shipping industry over the past 3 years to develop verification and acceptance procedures designed for customer convenience and flexibility in mail induction and postage payment. Current procedures for the acceptance and verification of parcel mailings are paper-driven and can be challenging in a dynamic shipping industry. This industry includes mailers and mail

owners (such as catalog companies, order-fulfillment houses, and e-commerce firms) as well as shippers (such as regional and national carriers and parcel consolidators and transporters handling parcels from mailers, mail owners, and other shippers).

Current Operational and Document Flow

Current operational cycles of parcel mailers and shippers tend to be tied to the schedule of Postal Service clerks who visit their plants and distribution centers to verify and accept parcel mail before it can be entered into the mailstream or transported to Postal Service destination entry facilities for induction. For destination entry parcel mailers or shippers, scheduling poses a greater challenge because they must prepare paper documentation for each scheduled induction event at the time of acceptance and verification at their plants.

The critical documents used for parcel mail are the numerous postage statements representing payment for the many and varied destination entry points. These postage statements are generated with corresponding manifests to support the mail volume and destination delivery points. A challenge for the mailer or shipper is the high level of coordination needed to ensure that the mail, the Postal Service personnel charged with verification, and the mailer's or shipper's transportation all arrive around the same time. The additional key documentation for destination entry mail is PS Form 8125, *Plant-Verified Drop Shipment (PVDS) Verification and Clearance*, which serves as proof of payment for each specific destination entry shipment when presented to the Postal Service at the entry facility.

After Postal Service clerks verify the parcel mail at a mailer's or shipper's plant, the mail often flows through consolidators and transporters who must keep track of the various PS Forms 8125 that the Postal Service certified at the time the mail was verified.

When consolidators and transporters commingle parcels from multiple mailings, it becomes even more difficult to keep the physical mailings and corresponding documents intact. It is also difficult for Postal Service clerks at destination entry facilities to reconcile the paper documentation against the physical parcels received.

Mailers and shippers need a more convenient and flexible way to provide and update documentation and present mail. Likewise, the Postal Service needs a more consistent and accurate way to verify parcel mailings at destination entry facilities.

Benefits of eVS

The Postal Service and the parcel shipping industry have worked together to develop eVS as a new manifesting model that simplifies acceptance, verification, and induction of parcel mailings. Under this model, mailers or shippers barcode and manifest all parcels before transmitting an electronic manifest to the Postal Service.

The eVS manifest lists all barcoded parcels in a mailing and includes pertinent information for each parcel to support postage and fee payment. Under eVS, parcel mailings are no longer verified by the Postal Service at a mailer's or shipper's plant, and the mailer or shipper is no longer required to create paper documentation for induction activities. Mailers or shippers manifest the parcels, transmit the electronic files to the Postal Service, schedule appointments through the Facility Access and Shipment Tracking (FAST) system, and present the parcels at the desired destination entry facilities according to the appointments.

The Postal Service draws random statistical samples of the mailings at the appropriate plants and delivery units, and electronically compares the sampling data against the transmitted electronic manifest to verify the accuracy of the mailing. Electronic reports provide information on the discrepancies noted. These reports are available via the eVS Web site and can facilitate an automated reconciliation process.

Both mailers and shippers can benefit from the use of eVS for their parcel mailings as follows:

- Managing internal workflows is no longer limited by Postal Service verification schedules.
- Barcoding each parcel ensures greater precision in accounting and postage payment processes.
- Preparing and transmitting electronic manifests eliminate the need for paper documentation, significantly improving the efficiency of operations and reporting, and providing greater flexibility for updating information.
- Having access to a wealth of online reports provides up-to-date mailing and transaction information. This information, accessible 24 hours a day, 7 days a week, facilitates convenient information sharing between the Postal Service and the eVS mailers and shippers.

Requirements

eVS has two fundamental technical requirements that provide the necessary data and configuration for successful processing:

- *Electronic manifests.* The creation and successful transmission of electronic manifests to the Postal Service for postage payment will be required. The electronic file format and data elements to be used for these manifests are detailed in Postal Service Publication 205. The eVS electronic manifests will replace today's hardcopy manifest, as well as the associated hard-copy postage statement and PS Form 8125.
- *Parcel barcoding.* The application of a unique barcode to each parcel will be required. There are two standardized eVS barcode formats: the Confirmation Services barcode (that is, the current barcode used for Delivery Confirmation™ and Signature Confirmation™) and the Package Services routing barcode for parcels not containing Confirmation Services. Technical requirements for each barcode type are also detailed in Publication 205.
  - The barcode must be an authorized UCC/EAN 128 barcode meeting the technical requirements in Publication 205.
  - The mailer or shipper ID used in the barcode must be unique to the parcel shipper or the parcel shipper's client.
  - Each barcode must be unique for 12 consecutive months. (The Postal Service is currently developing requirements to shorten this period to 6 consecutive months for implementation by mid-2007.)

Because Delivery Confirmation service does not require any additional fees for Parcel Select items, mailers and shippers are encouraged to apply a Delivery Confirmation service barcode to all Parcel Select pieces. Delivery Confirmation service is available on other Package Services and Standard Mail parcels for $0.14, when using the electronic option. Mailers and shippers may choose to apply an alternate barcode as described in Publication 205 to avoid paying this fee. However, no delivery information will be available when using this barcode.

eVS Manifest Mailing Operations

The principal eVS manifest mailing operations for the eVS participant and the Postal Service are as follows:

1. *Transmitting electronic manifest files.* On or before the actual date of deposit (also called the date of mailing), the mailer or shipper transmits electronic manifests to the Postal Service detailing all eVS parcels to be deposited into the mail stream.

2. *Generating postage statements.* eVS generates postage statements using the information contained in the mailer's or shipper's transmitted manifest files and submits these postage statements directly to *PostalOne!*

3. *Paying postage and fees.* From the information on the generated postage statements, postage and any fees for special services are withdrawn from the mailer's or shipper's *PostalOne!* payment account. Account information, including current balances and transactions, is updated on the eVS Web site. The eVS mailer or shipper can access the password-protected Web pages to view postage statements and associated funds debited from the account.

4. *Transporting and depositing parcels.* The eVS mailer or shipper makes appointments through the Postal Service's FAST system and then the mailer or shipper transports and deposits the parcels at the appropriate Postal Service destination entry facility, based on the entry rate claimed:

a. Destination bulk mail center.

b. Destination sectional center facility.

c. Destination delivery unit.

5. *Sampling deposited parcels.* As parcels are deposited at the destination entry facilities, the Postal Service randomly samples the parcels using scanning devices and electronic scales and uploads the collected sampling data to the eVS application. The uploaded data is matched to the data manifested by the mailer or shipper and then compared to verify whether the manifested postage claimed by the mailer or shipper for the sampled parcels has been calculated correctly based on specific rate determinants and physical characteristics of the parcels. The results of the comparison are recorded in the eVS database and used to calculate the postage adjustment factor (PAF) described in the next section. Sampling data collected by the Postal Service includes the following:

a. Barcode information and rate markings on the mailing label.

b. Entry ZIP Code of the sampling site and destination ZIP Code on the mailing label.

c. Zone, if applicable to the class or subclass of mail.

d. Size of the parcel.

e. Weight of the parcel.

f. Machinability of the parcel.

6. *Determining mis-shipped and un-manifested parcels.* When barcodes on the mailing labels are scanned during the normal processing and delivery operations (for example, delivery scans collected for parcels prepared with Delivery Confirmation), the barcode data is transmitted to the eVS database to determine whether the parcels are mis-shipped or un-manifested. Mis-shipped parcels are parcels deposited at the incorrect destination entry facility. Un-manifested parcels are parcels scanned but not included on the mailer's or shipper's manifest.

7. *Assessing additional postage.* As described in the next section, the mailer or shipper is assessed postage for discrepancies found in the electronic manifests for any of the following:

a. Incorrectly rated parcels.

b. Mis-shipped parcels.

c. Un-manifested parcels.

Postage Adjustments

The eVS program will collect postage daily based on the electronic manifests received that day from mailers or shippers. For calculating postage adjustments in eVS, a mailing period is defined as a calendar month. A reconciliation period is defined as the 20 days immediately following the mailing period. In addition to the daily collection of postage based on the manifests, postage will be calculated and assessed for the following types of errors when detected:

- *Incorrectly rated parcels.* If total postage paid for the parcels on the manifests received for a mailing period is understated by more than 1.5% based on sampling and finding underpaid parcels, a postage adjustment factor (PAF) will be calculated by dividing the total postage for the sampled parcels by the postage claimed for the sampled parcels on the mailer's or shipper's manifests. If the PAF exceeds 1.015 (that is, the percentage of underpayment is greater than 1.5%), then the manifested postage amount for the entire mailing period will be multiplied by the PAF minus 1 (1.015 − 1) to determine the additional postage due.
- *Mis-shipped parcels.* For DDU parcels dropped at an incorrect entry location, the mailer or shipper will be charged the difference between the manifested postage and the single-piece rate for the parcel. In the case of Standard Mail parcels, the mailer or shipper will be charged the difference between the manifested postage and (whichever is less) the appropriate single-piece First-Class Mail rate or single-piece intra-BMC or inter-BMC Parcel Post rate. DDU rates are currently not available for Standard Mail parcels. To allow for improved delivery, mailers and shippers can be authorized to commingle Standard Mail parcels with Parcel Select parcels entered at DDUs. For DBMC and DSCF parcels dropped at an incorrect entry location, the sampled pieces become part of the postage adjustment factor calculation.
- *Un-manifested parcels.* If a parcel is not identified on a manifest, the mailer or shipper ID in the barcode will be used to establish accountability for payment of postage. Postage for un-manifested parcels will be based on data collected on these parcels at destinating Postal Service facilities. The mailer or shipper will be allowed to reconcile un-manifested parcels by transmitting an electronic manifest for the parcels within 10 days after the close of the mailing period. A mailing period is defined as a calendar month. Any un-manifested parcels receiving a manifest record prior to the 11th day of the subsequent month will be removed from this assessment. Un-manifested parcels do not become part of the postage adjustment factor calculation.

The Postal Service will work with mailers and shippers required to pay postage adjustments for incorrectly rated parcels, mis-shipped parcels, and un-manifested parcels to determine the causes leading to these adjustments and review quality control procedures. It is important that the mailer or shipper maintain quality control procedures to ensure accountability of parcels entered under the eVS manifest program.

Postage Payment Schedule

Under eVS, the collection of postage and any postage adjustment occurs as follows:

- The mailer's or shipper's *PostalOne!* payment account is debited on a daily basis. Payment for each manifest is debited on the day the manifest is submitted.
- At the end of each mailing period, defined as a calendar month, the mailer's or shipper's *PostalOne!* payment account is debited for postage for (1) mis-shipped parcels, (2) un-manifested parcels, and (3) postage adjustments on the manifested postage, if the PAF exceeds 1.015. These additional postage amounts are processed on the 21st day of the month following the mailing period to allow mailers and shippers time to investigate and reconcile discrepancies. Between the end of a mailing period and the 21st day of the following month, there are two 10-day review periods:

○ The first 10-day period is a mailer or shipper review period and begins immediately after the end of the mailing period and extends through the 10th day of the month following the mailing period. During this period, the mailer or shipper may submit manifests to account for un-manifested parcels.

○ The second 10-day period is a joint review period between the mailer or shipper and the Postal Service and begins immediately following the mailer

or shipper review period and extends through the 20th day of the month following the mailing period. During this period, at the mailer's or shipper's request, the mailer or shipper may jointly review the sampling data with the Postal Service to dispute any data indicating a postage adjustment is due. Appeals and refund requests must be submitted in writing to the Business Mailer Support manager within 30 days following the end of the joint review period.

EVS Implementation

Required use of eVS will be effective August 1, 2007. This over 1-year notice period will provide mailers and shippers with sufficient time to meet eVS standards, as well as sufficient time to perform testing necessary to ensure satisfactory operation.

We adopt the following amendments to Mailing Standards of the United States Postal Service, Domestic Mail Manual (DMM), incorporated by reference in the Code of Federal Regulations. See 39 CFR 111.1.

List of Subjects in 39 CFR Part 111

Postal Service.

■ Accordingly, 39 CFR part 111 is amended as follows:

PART 111—[AMENDED]

■ 1. The authority citation for 39 CFR part 111 continues to read as follows:

Authority: 5 U.S.C. 552(a); 39 U.S.C. 101, 401, 403, 404, 414, 3001–3011, 3201–3219, 3403–3406, 3621, 3626, 5001.

■ 2. Revise the following sections of *Mailing Standards of the United States Postal Service, Domestic Mail Manual (DMM®)* as provided below:

Mailing Standards of the United States Postal Service, Domestic Mail Manual

* * * * *

400 Discount Mail Parcels

* * * * *

440 Standard Mail

* * * * *

446 Enter and Deposit

* * * * *

2.0 Destination Entry

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2.3 Postage Payment

[Revise 2.3, as follows:]

Except for mailings paid using the Electronic Verification System (eVS), mailers pay postage at the Post Office where they are authorized to present mailings for verification. For mailings paid using eVS under 705.2.9, mailers must pay postage at the Post Office where they hold the permit used for such mailings. Prior to mailing, mailers must ensure that they have paid the correct mailing fee(s) for the current 12-month period at the Post Office where they pay postage for the mailing.

* * * * *

2.7 Verification

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2.7.2 Mail Separation and Presentation

[Revise 2.7.2, as follows:]

Mailers who commingle Standard Mail parcels with Parcel Select mailings authorized under 705.6.0 must present mailings and pay postage using the Electronic Verification System (eVS) if required by 705.2.9. Unless presenting mailings using eVS as required under 705.2.9, mailers must present destination entry rate mailings for verification and acceptance as follows:

a. Present mailings for verification and acceptance at a business mail entry unit (BMEU) at a destination postal facility; or

b. Present mailings for Postal Service verification under a plant-verified drop shipment (PVDS) system (see 705.15.0), and then enter mailings at destination entry facilities under the following conditions:

1. For all mailings, provide a completed Form 8125, 8125-C, or 8125-CD.

2. Separate mailings for deposit at one destination postal facility from mailings for deposit at other facilities to allow reconciliation with each accompanying Form 8125, 8125-C, or 8125-C.

3. Deposit only PVDS mailings at a destination delivery unit not co-located with a postal facility having a BMEU.

c. When Periodicals mail is on the same vehicle as Standard Mail, mailers should load the Periodicals mail toward the tail of the vehicle.

[Delete 2.7.3 and renumber 2.7.4 to 2.7.7 as 2.7.3 to 2.7.6.]

* * * * *

450 Parcel Post

* * * * *

454 Postage Payment and Documentation 1.0 Basic Standards for Postage Payment

* * * * *

1.2 Postage Payment

[Revise 1.2, as follows:]

Mailers must pay postage and fees at the Post Office where they are authorized to present mailings for verification. See 456.2.2.4 for additional information about paying postage and fees for Parcel Select mailings.

* * * * *

456 Enter and Deposit

* * * * *

2.0 Parcel Select

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2.2 Rate Eligibility for Parcel Select Rates

* * * * *

2.2.4 Postage Payment

[Revise 2.2.4 to read as follows:]

Postage payment is subject to the following:

a. Mailers must pay postage and fees at the Post Office where they are authorized to present mailings for verification, except under 2.2.4b. Except for plant-verified drop shipments (see 705.15.0) or metered mail drop shipments (see 705.17.0), mailers must have a meter license or permit imprint authorization at the parent Post Office for mailings deposited for entry at a DBMC or ASF, at a DSCF, or at a DDU.

b. As required by 705.2.9, mailers who mail parcels paid with a permit imprint and claimed at Parcel Select rates must use the Electronic Verification System (eVS). Mailers using eVS must pay postage and fees at the Post Office where they hold the permit used for eVS mailings.

* * * * *

2.4 Deposit for Parcel Select

* * * * *

2.4.3 Mail Separation and Presentation

[Revise 2.4.3 to read as follows:]

As required by 705.2.9, mailers must present all permit imprint Parcel Select mailings using the Electronic Verification System (eVS). Mailers must have destination entry rate mail verified under a PVDS system (see 705.15.0) or present mailings for verification and acceptance at a BMEU located at a designated destination postal facility. Mailers may deposit only PVDS mailings at a destination delivery unit not co-located with a Post Office or other Postal Service facility having a business mail entry unit. Mailers presenting destination entry mailings to the Postal Service must meet the following requirements:

a. Mark each piece of DBMC, DSCF, or DDU rate Parcel Post as either ''Parcel Post'' or ''Parcel Select,'' according to 402.2.2. If eVS is used, mailers must also mark each piece ''eVS'' as described in 604.5.0.

b. Separate DBMC rate mailings by zone for permit imprint mailings of identical-weight pieces that are not mailed using a special postage payment system under 705.2.0 through 705.4.0, or that are not mailed under 455.1.4.

c. Except for PVDS mailings presented using eVS, ensure that all PVDS mailings are accompanied by a completed Form 8125, 8125–C, or 8125–CD.

d. Separate each mailing from other mailings for verification. For PVDS mailings, separate mailings for deposit at different destination postal facilities to allow for reconciliation with each Form 8125, 8125–C, or 8125–CD. eVS mailings prepared under 705.2.9 must be physically separate for each destination postal facility but do not require Form 8125.

e. Separate mail from freight transported on the same vehicle.

f. If Periodicals mail is on the same vehicle as Parcel Post, load the Periodicals mail toward the tail of the vehicle.

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460 Bound Printed Matter

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466 Enter and Deposit

* * * * *

2.0 Destination Entry

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2.3 Postage Payment

[Revise 2.3 to read as follows:]

Postage payment is subject to the following:

a. Mailers must pay postage and fees to the Post Office where they are authorized to present mailings for verification, except for mail paid using the Electronic Verification System (eVS).

b. When parcels for any destination rates are commingled with Parcel Select mail under 705.7.0, mailers must document and pay postage using eVS as required under 705.2.9.

c. For mailings paid using eVS, mailers must pay postage and fees at the Post Office where the mailer holds the permit used for eVS mailings.

* * * * *

2.8 Verification

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2.8.2 Mail Separation and Presentation

[Revise text of 2.8.2 to read as follows:]

As required by 705.2.9, mailers must present all Bound Printed Matter parcel manifest mailings commingled with Parcel Select mail (under 705.7.0) using the Electronic Verification System (eVS). Unless required to use eVS, mailers may present mailings using a Manifest Mailing System (MMS) without participating in eVS. Mailers must have destination entry rate mail verified under a PVDS system (see 705.15.0) or present mailings for verification and acceptance at a BMEU located at a designated destination postal facility. Mailers may deposit only PVDS mailings at a destination delivery unit not co-located with a Post Office or other Postal Service facility having a business mail entry unit. Mailers presenting destination entry mailings to the Postal Service must meet the following requirements:

a. Except for mailings presented using eVS, ensure that all PVDS mailings are accompanied by a completed Form 8125, 8125–C, or 8125–CD.

b. Separate each mailing from other mailings for verification. For PVDS, separate mailings for deposit at different destination postal facilities to allow reconciliation with each Form 8125, 8125–C, or 8125–CD. eVS mailings prepared under 705.2.9 are must be physically separate for each destination postal facility but do not require Form 8125.

c. Separate mail from freight transported on the same vehicle.

d. If Periodicals mail is on the same vehicle as Bound Printed Matter, load the Periodicals mail toward the tail of the vehicle.

* * * * *

600 Basic Standards for All Mailing Services

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604 Postage Payment Methods

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5.0 Permit Indicia (Indicia)

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5.3 Indicia Design, Placement, and Content

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5.3.6 First-Class Mail and Priority Mail Format

[Revise text of 5.3.6 by adding the following sentence after the first sentence as follows:]

* * * If eVS is used under 705.2.9, the marking ''eVS'' (or the alternative ''e-VS'') must appear directly below the permit number. * * *

5.3.7 Standard Mail and Package Services Format

[Revise text of 5.3.7 by adding the following sentence after the first sentence as follows:]

* * *If eVS is used under 705.2.9, the marking ''eVS'' (or alternative ''e-VS'') must appear directly below the permit number. * * *

* * * * *

5.3.9 Use of a Company Permit Imprint

A company permit imprint is one in which the exact name of the company or individual holding the permit is shown in the indicia in place of the city, state, and permit number. If eVS is used under 705.2.9, the marking ''eVS'' (or alternative ''e-VS'') must appear directly below the name. * * *

* * * * *

608 Postal Information and Resources

* * * * *

8.0 USPS Contact Information

8.1 Postal Service

Revise room number and ZIP+4 for Business Mailer Support address as follows:]

BUSINESS MAILER SUPPORT
U.S. POSTAL SERVICE,
475 L'ENFANT PLZ S.W. RM 2P846
WASHINGTON, DC 20260–0846

* * * * *

700 Special Standards

* * * * *

705 Advanced Preparation and Special Postage Payment Systems

* * * * *

2.0 Manifest Mailing System (MMS)

2.1 Description

[Add new 2.1.1 by moving text from old 2.1 to new 2.1.1. Change the last sentence in new 2.1.1 to read as follows:]

2.1.1 Using an MMS

* * * The standards in 2.2 describe how to mail using an MMS.

[Add new item 2.1.2 to read as follows:]

2.1.2 Required Use of Electronic Verification System (eVS)

As required by 2.9, mailers using MMS when presenting Parcel Select mailings under 456.2.0 or commingled mailings with Parcel Select under 705.6.0 or 705.7.0 must document and pay postage using eVS. Business Mailer Support (BMS) can provide mailers with

information for developing and receiving approval for these systems.

* * * * *

2.4 Authorization

* * * * *

2.4.1 Application

[Revise by adding the following sentence to the end of 2.4.1, as follows:]

* * * Publication 205, *Electronic Verification System Technical Guide*, provides the application procedures for mailers using eVS (see 2.1.2). To receive a copy, contact the Business Mailer Support manager, USPS Headquarters (see 608.8.0 for address).

* * * * *

2.4.3 General Requirements for Authorization

* * * * *

[Revise item b, renumber items c, d, and e as items e, f, and g, and add new items c and d, as follows:]

b. If total postage of pieces sampled during verification indicates that the mailer has underpaid postage by more than 1.5% when compared with the manifest, USPS adjusts total postage using the procedures in Publication 205. USPS charges eVS participants at the end of the review period following the mailing period.

c. USPS charges eVS participants the appropriate single-piece rate for mis-shipped parcels (parcels deposited at incorrect destination facilities). USPS transports these mis-shipped parcels to the correct destination.

d. USPS charges eVS participants for any parcels not listed on the mailer's manifest but identified by USPS processing scans as being mailed. USPS removes these un-manifested parcels from any sampling adjustments.

* * * * *

2.4.4 Approval Authority

The final authority for manifest mailing approval is as follows:

* * * * *

[Revise 2.4.4 b, as follows:]

b. The Business Mailer Support manager, USPS Headquarters, approves manifest mailing systems that produce presorted First-Class Mail and Standard Mail mailings, Package Services mailings, PVDS mailings, and all mailings using eVS.

* * * * *

[Add new 2.9, as follows:]

2.9 Electronic Verification System (eVS)

2.9.1 Required Use

Effective August 1, 2007, mailers depositing permit imprint parcels claimed at Parcel Select rates must document and pay postage using eVS as described in 2.9. Effective August 1, 2007, mailers authorized to commingle Standard Mail machinable parcels or Package Service parcels with Parcel Select under 705.6.0 and 705.7.0 must also use eVS to document and pay postage for all parcels in the mailing.

2.9.2 Mailer System

Mailers must have an automated system that produces mail according to USPS standards and calculates postage accurately. Mailers must assign a barcode to each mailpiece according to Publication 205, *Electronic Verification System Technical Guide*. Mailers also must produce and submit an electronic manifest, as described in Publication 205, for each mailing deposited at a destination postal facility. The USPS scans barcodes during sampling to verify information from the mailer's manifest. The electronic manifest must account for every piece in the mailing, under the following conditions:

a. For each mailpiece produced, the electronic manifest must list the postage for the piece and the factors used to calculate the correct amount of postage, such as the piece weight and destination postal zone.

b. For each record produced, the manifest must include the unique package identification code represented by the barcode on the mailpiece.

c. When extra services are requested, the manifest must include the correct fees for each piece.

2.9.3 Mailer Quality Control

Mailers must implement a quality control program that ensures proper mail preparation, proper payment of postage, and provides accurate documentation. The service agreement must detail the USPS-approved quality control procedures.

2.9.4 Required Barcode

Mailers must apply an approved barcode on the address side of each mailpiece. Barcodes must meet specifications described in Publication 205, *Electronic Verification System Technical Guide.*

2.9.5 Postage Payment

USPS calculates postage payment and electronically debits postage from the mailer's postage account based on information received from the mailer's electronic manifest and data collected through USPS operational and sampling scans. Mailings deposited under eVS must meet the standards for permit imprint mail in 604.5.0. Mailers must pay for postage through a Centralized Account Payment System (CAPS) account.

2.9.6 Verification and Postage Adjustments

USPS randomly samples parcels and considers verification samples to be representative of the entire mailing period. USPS applies postage adjustment calculations, based on verification samples, to all mailpieces mailed during the mailing period. A mailing period is defined as a calendar month for purposes of calculating adjustments in eVS. USPS adjusts the total postage for the mailing period if the total postage or the total weight of pieces sampled during the mailing period results in an underpayment greater than 1.5%.

2.9.7 General Requirements for Participation

General requirements for participation are as follows:

a. Mailers must apply on each mailpiece a unique barcode with the mailer ID number.

b. Mailers must transmit an electronic manifest on or before the date of mailing.

c. The mailer must pay postage for any underpayments identified by USPS verification. Mailers must maintain sufficient funds in their postage accounts to cover any underpayments discovered after acceptance of the mail.

2.9.8 Authorization

Mailers must be authorized to participate in eVS according to the following procedures:

a. Mailers must submit an eVS application and supporting documentation as specified in Publication 205, *Electronic Verification System Technical Guide,* to the Business Mailer Support manager, USPS Headquarters (see 608.8.0 for address).

b. After mailers successfully complete development and testing for eVS, the USPS grants temporary approval. USPS conducts a review within 90 days of the temporary approval and will give final approval if the mailer's system is working as required. The Business Mailer Support manager, USPS Headquarters, has final authority for eVS participation approval.

c. After receiving final authorization, the mailer and a USPS representative must sign a service agreement. The agreement contains provisions regarding mailer and USPS responsibilities, including electronic documentation, document retention, quality control, and the duration of the agreement.

2.9.9 Denial

If USPS denies an eVS application, the mailer may appeal the decision within 15 days from the receipt of the notice by filing a written appeal, including evidence showing why they should be authorized to use eVS. Send the appeal to the Business Mail Acceptance manager, USPS Headquarters, who issues the final agency decision (See 608.8.0 for address.).

2.9.10 Revocation

The Business Mailer Support manager has authority to revoke authorization for eVS participation for any of the following reasons:

a. A mailer provides incorrect data in the electronic manifest and is not able or willing to correct the problems.

b. A mailer is not properly completing the required quality control procedures.

c. The mailings no longer meet eVS criteria established by this standard or in the eVS service agreement.

d. A mailer does not present mailings using eVS for more than 6 months (except as noted in the service agreement).

e. A mailer presents mailings that are improperly prepared.

f. A mailer is not paying proper postage.

2.9.11 Corrective Action

After USPS issues a notice of revocation to a mailer, the mailer and the USPS determine corrective actions, including an implementation schedule. At the conclusion of the implementation period, the USPS reexamines the mailer's system to determine if it complies with the program requirements. Failure to correct identified problems is sufficient grounds to sustain revocation of the mailer's eVS authorization.

2.9.12 Appeal of Revocation

After receiving initial notice of revocation, a mailer has 15 days from the date of receipt of the revocation notice to file a written appeal with the Business Mail Acceptance manager, USPS Headquarters. The appeal must include the reason the eVS authorization should not be revoked. The mailer may continue to mail using eVS during the appeal process. The Business Mail Acceptance manager issues the final agency decision. The final revocation takes effect 15 days after the date of the final agency decision.

* * * * *

6.0 Combining Mailings of Standard Mail and Package Services Parcels

[*Revise title of 6.1, as follows:*]

6.1. Combining Machinable Parcels—DBMC Entry

* * * * *

6.1.2 Basic Standards

* * * * *

6.1.3 Postage Payment

[*Revise 6.1.3 to add requirement for eVS and reorganize, as follows:*]

Mailers must pay postage for all pieces with a permit imprint at the Post Office serving the mailer's plant using one of the following postage payment systems. The applicable system agreement must include procedures for combined mailings approved by Business Mailer Support.

a. Manifest Mailing System (MMS), under 2.0.

b. Optional Procedure (OP) Mailing System, under 3.0, until required under 705.2.9.

c. Alternate Mailing System (AMS), under 4.0, until required under 705.2.9.

d. For mailings presented under 705.6.0, mailers must document and pay postage using the Electronic Verification System under 705.2.9.

* * * * *

[*Revise title of 6.2, as follows:*]

6.2 Combining Parcels—DSCF Entry, Parcel Post OBMC Presort and BMC Presort

* * * * *

6.2.3 Postage Payment

[*Revise text of 6.2.3 to include eVS requirement for DSCF entry parcels, as follows:*]

Mailers must pay postage for all pieces with a permit imprint at the Post Office serving the mailer's plant using an approved manifest mailing system under 2.0. The following conditions also apply:

a. The applicable system agreement must include procedures for combined mailings approved by Business Mailer Support.

b. For mailings presented under 705.6.0, mailers must document and pay postage using the Electronic Verification System under 705.2.9.

* * * * *

7.0 Combining Package Services Parcels for Destination Entry

7.1 Combining Parcels for DSCF and DDU Entry

* * * * *

7.1.2 Basic Standards

[*Add the following sentence at the end of 7.1.2b, as follows:*]

b. * * * For mailings presented under 705.7.0, mailers must document and pay postage using the Electronic Verification System (eVS) under 705.2.9.

* * * * *

8.0 Preparation for Pallets

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8.6 Pallet Labels

* * * * *

8.6.6 Line 3 (Origin Line)

[*Revise 8.6.6, as follows:*]

The office of mailing or mailer information line (line 3 of required information) must be the bottom line of required information unless the pallet or pallet box contains mail prepared under the Electronic Verification System (eVS). Line 3 must show either the city and state of the entry Post Office or the mailer's name and the city and state of the mailer's location. It is recommended that the mailer's name also appear with the city and state of the entry Post Office.

[*Renumber current 8.6.7 through 8.6.10 as 8.6.8 through 8.6.11 and add new 8.6.7, as follows:*]

8.6.7 Electronic Verification System (eVS)

All pallets and pallet boxes containing parcels prepared and identified using the Electronic Verification System (eVS) under 705.2.9 must show ''eVS'' (or the alternatives ''EVS'' or ''E-VS'') directly below line 3 (origin line) using the same size and lettering used for line 3.

* * * * *

Neva R. Watson,

Attorney, Legislative.

[FR Doc. 06–6021 Filed 7–7–06; 8:45 am]

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REMINDERS

The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

RULES GOING INTO EFFECT JULY 10, 2006

AGRICULTURE DEPARTMENT

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AGRICULTURE DEPARTMENT

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Business and industry guaranteed loans; tangible balance sheet equity; published 6-8-06

COMMERCE DEPARTMENT

National Oceanic and Atmospheric Administration

Fishery conservation management:

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Shrimp fishery; published 7-10-06

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Personal commercial solicitation on DoD installations; published 7-10-06

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Assistance regulations:

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New Jersey; published 7-10-06

Hazardous waste program authorizations:

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Virginia; published 5-10-06

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Radio stations; table of assignments:

North Carolina; published 6-14-06

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Noyes, MN, port closing; Pembina, ND, port limits extension; published 6-8-06

HOMELAND SECURITY DEPARTMENT

Support Anti-Terrorism by Fostering Effective Technologies Act of 2005 (SAFETY ACT); implementation; published 6-8-06

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Agricultural Marketing Service

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Nectarines and peaches grown in California; comments due by 7-17-06; published 7-5-06 [FR E6-10425]

AGRICULTURE DEPARTMENT

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LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with ''P L U S'' (Public Laws Update Service) on 202–741–6043. This list is also available online at *http://www.archives.gov/federal-register/laws.html*.

The text of laws is not published in the **Federal Register** but may be ordered in ''slip law'' (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO Access at *http://www.gpoaccess.gov/plaws/index.html*. Some laws may not yet be available.

H.R. 5403/P.L. 109–239

Safe and Timely Interstate Placement of Foster Children Act of 2006 (July 3, 2006; 120 Stat. 508)

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CFR CHECKLIST

This checklist, prepared by the Office of the Federal Register, is published weekly. It is arranged in the order of CFR titles, stock numbers, prices, and revision dates.

An asterisk (*) precedes each entry that has been issued since last week and which is now available for sale at the Government Printing Office.

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Title	Stock Number	Price	Revision Date
1	(869–060–00001–4)	5.00	[4]Jan. 1, 2006
2	(869–060–00002–0)	5.00	Jan. 1, 2006
3 (2003 Compilation and Parts 100 and 101)	(869–056–00003–1)	35.00	[1] Jan. 1, 2005
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0–19	(869–056–00192–4)	61.00	Oct. 1, 2005
20–39	(869–056–00193–2)	46.00	Oct. 1, 2005
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[1] Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

[2] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[3] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

[4] No amendments to this volume were promulgated during the period January 1, 2005, through January 1, 2006. The CFR volume issued as of January 1, 2005 should be retained.

[5] No amendments to this volume were promulgated during the period April 1, 2000, through April 1, 2006. The CFR volume issued as of April 1, 2000 should be retained.

[6] No amendments to this volume were promulgated during the period April 1, 2005, through April 1, 2006. The CFR volume issued as of April 1, 2004 should be retained.

[7] No amendments to this volume were promulgated during the period July 1, 2004, through July 1, 2005. The CFR volume issued as of July 1, 2004 should be retained.

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